



Federal Register

10-3-00

Vol. 65 No. 192

Pages 58901-59104

Tuesday

Oct. 3, 2000



The **FEDERAL REGISTER** is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition.

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- FOR:** Any person who uses the Federal Register and Code of Federal Regulations.
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- WHAT:** Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
 2. The relationship between the Federal Register and Code of Federal Regulations.
 3. The important elements of typical Federal Register documents.
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- WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: October 17, 2000, at 9:00 a.m.
WHERE: Office of the Federal Register
Conference Room
800 North Capitol Street, NW.
Washington, DC
(3 blocks north of Union Station Metro)

RESERVATIONS: 202-523-4538



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Consult the Reader Aids section at the end of this issue for
phone numbers, online resources, finding aids, reminders,
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Rules and Regulations

Federal Register

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 591

RIN 3206-AJ26

Cost-of-Living Allowances (Nonforeign Areas); Hawaii County, Kauai County, Guam (Commissary/Exchange), Maui County, Puerto Rico, and the U.S. Virgin Islands

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management is publishing an interim regulation to increase the cost-of-living allowance (COLA) rates paid to certain Federal employees in Hawaii, Guam, Puerto Rico, and the U.S. Virgin Islands. This regulation increases the COLA rate for Hawaii County, HI, from 15 percent to 16.5 percent; Kauai County, HI, from 22.5 percent to 23.25 percent; Maui County, HI, from 22.5 percent to 23.75 percent; Guam (Commissary/Exchange) from 20 percent to 22.5 percent; Puerto Rico from 10 percent to 11.5 percent; and the U.S. Virgin Islands from 20 percent to 22.5 percent. All other COLA rates remain unchanged. The new rates are the result of the settlement of *Caraballo et al. v. United States*, Civil No. 1997/27 (D.V.I.).

DATES: *Effective Date:* October 1, 2000. *Implementation date:* First day of the first pay period beginning on or after October 1, 2000. *Comment date:* Submit comments by December 4, 2000.

ADDRESSES: Send or deliver comments to Donald J. Winstead, Assistant Director for Compensation Administration, Workforce Compensation and Performance Service, Office of Personnel Management, Room 7H31, 1900 E Street NW., Washington, DC 20415-8200; FAX: (202) 606-4264; or email: COLA@opm.gov.

FOR FURTHER INFORMATION CONTACT: Donald L. Paquin, (202) 606-2838; FAX: (202) 606-4264; or email at COLA@opm.gov.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management (OPM) is increasing the cost-of-living allowance (COLA) rates paid to certain Federal employees in Hawaii, Guam, Puerto Rico, and the U.S. Virgin Islands. The table below shows the new allowance rates and the places where they apply. The COLA rates in all other allowance areas remain the same.

Allowance area	Old COLA rate ¹	New COLA rate ¹
Hawaii County	15.00	16.50
Kauai County	22.50	23.25
Maui County	22.50	23.75
Guam (Commissary/Exchange)	20.00	22.50
Puerto Rico	10.00	11.50
U.S. Virgin Islands	20.00	22.50

¹ In percent.

OPM is making these changes pursuant to section 9 and Exhibit C of the stipulation for settlement of *Caraballo et al. v. United States*, Civil No. 1997/27 (D.V.I.). The court approved the settlement on August 17, 2000. The settlement prescribes the new COLA rates and requires that they be made effective on the first day of the first applicable pay period beginning on or after October 1, 2000. OPM is using an interim rule to implement these increases so that agencies can apply the new rates in a timely fashion.

Rulemaking waivers

Under 5 U.S.C. 553(b)(3)(B) and (d)(3), OPM finds that good cause exists to waive the publication of proposed rulemaking and the 30-day delay in the effective date of this regulation. Consistent with the terms of the court-approved settlement agreement, we believe it is in the public interest to implement the interim COLA rate increases immediately. In the future, as we have done in the past, we plan to announce COLA rate adjustments in a proposed rule for public notice and comment.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities

because the regulation will affect only Federal agencies and employees.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 5 CFR Part 591

Government employees, Travel and transportation expenses, Wages.

Office of Personnel Management.

Janice R. Lachance,
Director.

Accordingly, the Office of Personnel Management amends 5 CFR part 591 as follows:

PART 591—ALLOWANCES AND DIFFERENTIALS

Subpart B—Cost-of-living Allowance and Post Differential—Nonforeign Areas

1. The authority citation for subpart B of part 591 continues to read as follows:

Authority: 5 U.S.C. 5941; E.O. 10000, 3 CFR, 1943-1948 Comp., p. 792; and E.O. 12510, 3 CFR, 1985 Comp., p. 338.

2. Appendix A of subpart B is amended by revising the table to read as follows:

Appendix A of Subpart B—Places and Rates at Which Allowances Shall Be Paid

Geographic coverage/ allowance category	Authorized allowance rate (percent)
State of Alaska	
City of Anchorage and 80-kilometer (50-mile) radius by road:	
All employees	25.00
City of Fairbanks and 80-kilometer (50-mile) radius by road:	
All employees	25.00
City of Juneau and 80-kilometer (50-mile) radius by road:	
All employees	25.00
Rest of the state:	
All employees	25.00
State of Hawaii	
City and County of Honolulu:	
All employees	25.00
County of Hawaii:	
All employees	16.50
County of Kauai:	

Geographic coverage/ allowance category	Authorized al- lowance rate (percent)
All employees	23.25
County of Maui and County of Kalawao:	
All employees	23.75
Territory of Guam and Commonwealth of the Northern Mariana Is- lands	
Local Retail	25.00
Commissary/Exchange	22.50
Commonwealth of Puerto Rico	
All Employees	11.50
U.S. Virgin Islands	
All Employees	22.50

* * * * *

[FR Doc. 00-25288 Filed 10-2-00; 8:45 am]

BILLING CODE 6325-01-U

MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1201

Practices and Procedures

AGENCY: Merit Systems Protection Board.

ACTION: Final rule.

SUMMARY: The Merit Systems Protection Board (MSPB or the Board) is amending its rules of practice and procedure in this part to reflect the relocation of its Washington Regional Office. On September 11, 2000, the Board relocated its Washington Regional Office from 5203 Leesburg Pike, Falls Church, Virginia, to 1800 Diagonal Road, Alexandria, Virginia. Appendix II of this part is amended to show the new address. The facsimile number and the geographical areas served by the Washington Regional Office are unchanged.

EFFECTIVE DATE: October 3, 2000.

FOR FURTHER INFORMATION CONTACT: Robert E. Taylor, Clerk of the Board, (202) 653-7200.

The Board is publishing this rule as a final rule pursuant to 5 U.S.C. 1204(h).

List of Subjects in 5 CFR Part 1201.

Administrative practice and procedure, Civil rights, Government employees.

Accordingly, the Board amends 5 CFR part 1201 as follows:

PART 1201—PRACTICES AND PROCEDURES

1. The authority citation for part 1201 continues to read as follows:

Authority: 5 U.S.C. 1204 and 7701, unless otherwise noted.

2. Amend Appendix II to 5 CFR part 1201 in item 4. by removing “5203 Leesburg Pike, Suite 1109, Falls Church, Virginia 22041-3473” and adding, in its place “1800 Diagonal Road, Alexandria, Virginia 22314”.

Dated: September 27, 2000.

Robert E. Taylor,
Clerk of the Board.

[FR Doc. 00-25282 Filed 10-2-00; 8:45 am]

BILLING CODE 7400-01-P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 234

[INS No. 2045-00]

RIN 1115-AF72

Landing Requirements for Passengers Arriving From Cuba

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule amends the Immigration and Naturalization Service (Service) regulations by providing that aircraft and passengers arriving in the United States from Cuba must enter the United States at either the John F. Kennedy International Airport, Jamaica, New York, Los Angeles International Airport, Los Angeles, California or the Miami International Airport, Miami, Florida unless advance permission to land elsewhere has been obtained from the Office of Field Operations at Headquarters.

This rule is necessary to facilitate licensed travel to and from Cuba, including family reunification for Cuban resident aliens and United States citizens of Cuban heritage living in U.S. cities other than in South Florida.

DATES: This rule is effective October 3, 2000.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Tisdale, Assistant Chief Inspector, Immigration and Naturalization Service, 425 I Street, NW., Room 4064, Washington, DC 20536, telephone number (202) 514-0912.

SUPPLEMENTARY INFORMATION:

What Are the Present Requirements Regarding the Location and Inspection of Flights From Cuba?

Section 234.2(a) provides that:

• Aircraft carrying passengers or crew who are required to be inspected under

section 235 of the Immigration and Nationality Act (Act) on flights originating in Cuba shall land only at Fort Lauderdale-Hollywood Airport, Fort Lauderdale, Florida, unless

• Advance permission to land elsewhere has been obtained from the District Director of the Immigration and Naturalization Service at Miami, Florida.

Why Are Flights From Cuba Being Allowed To Land at Other Airports?

In a statement issued on January 5, 1999, the President announced a series of humanitarian measures designed to reach out to and ease the plight of the Cuban people and to help them prepare for a democratic future. As one of these measures, the President authorized the restoration of flights between Cuba and some cities in the United States in addition to South Florida. The purpose of this measure is to facilitate licensed travel to and from Cuba, including family reunification for Cuban resident aliens and U.S. citizens of Cuban heritage living in the United States cities other than in the Miami/Fort Lauderdale area.

What Airports Are Being Designated Under This Rule?

Section 235.2(a) is being amended to allow direct flights from Cuba to land at:

- John F. Kennedy International Airport, Jamaica, New York,
- Los Angeles International Airport, Los Angeles California, or
- Miami International Airport, Miami, Florida.

Will Flights From Cuba Be Allowed To Land at Any Other Airports in the United States, Particularly Fort Lauderdale?

No, direct flights will not be allowed to land at any other airport in the United States, including Fort Lauderdale, unless advance permission to land elsewhere has been obtained from the Office of Field Operations at Headquarters.

Have Other Agencies Acted on the President's Announcement?

The Department of State and the National Security Council have specifically directed that direct charter passenger flights by persons who possess a valid Office of Foreign Assets Control Carrier Service Provider authorization may operate between Cuba and John F. Kennedy International Airport, Jamaica, New York, Los Angeles International Airport, Los Angeles, California, or Miami International Airport, Miami, Florida.

The United States Customs Service amended its regulations at 19 CFR 122.153 and 122.154 to permit travel to the same three designated airports in a final rule published in the **Federal Register** on October 4, 1999, at 64 FR 53627.

Good Cause Exception

Pursuant to the provisions of 5 U.S.C. 553(a)(1), public notice and comment procedure is not applicable to this rule because this rule falls within the foreign affairs function of the United States. As previously noted, the rule implements a January 5, 1999, announcement by the President that direct passenger flights would be authorized to and from Cuba and other U.S. cities as part of a humanitarian effort designed to reach out and ease the plight of the Cuban people. Because this document is not subject to the requirements of 5 U.S.C. 553, delayed effective date requirements are not applicable.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule affects individuals and families and is intended to facilitate licensed travel to and from Cuba.

Executive Order 12866

This rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Executive Order 13132

This regulation will not have substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal

governments in the aggregate, or by the private sector, of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12988, Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

List of Subjects in 8 CFR Part 234

Administrative practice and procedure, Aliens Passports and visas.

Accordingly, part 234 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 234—DESIGNATION OF PORTS OF ENTRY FOR ALIENS ARRIVING BY CIVIL AIRCRAFT

1. The authority citation for part 234 continues to read as follows;

Authority: 8 U.S.C. 1103, 1221, 1229; 8 CFR part 2.

2. In § 234.2, paragraph (a) is amended by revising the last sentence to read as follows:

§ 234.2 Landing requirements.

(a) * * * Notwithstanding the foregoing, aircraft carrying passengers and crew required to be inspected under the act on flights originating in Cuba shall land only at John F. Kennedy International Airport, Jamaica, New York; the Los Angeles International Airport, Los Angeles, California; or the Miami International Airport, Miami, Florida, unless advance permission to land elsewhere has been obtained from the Office of Field Operations at Headquarters.

* * * * *

Dated: March 28, 2000.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 00-25319 Filed 10-2-00; 8:45 am]

BILLING CODE 4410-10-M

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R-1070]

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is adopting a final rule amending Regulation Z, which implements the Truth in Lending Act, to revise the disclosure requirements for credit and charge card solicitations and applications. The act requires disclosure of the annual percentage rate (APR) and other cost information in direct mail and other applications and solicitations to open card accounts. The amendments to Regulation Z are intended to enhance consumers' ability to notice and understand this cost information that generally must be provided in the form of a table. Under the final rule, disclosures must be in a readily understandable form and readily noticeable to consumers. The APR disclosed for purchase transactions must be in 18-point type. Cash advance and balance transfer APRs must be included in the table and any balance transfer fee must be disclosed either in or outside of the table. Additional guidance is provided on the requirement that the card solicitation and application disclosures be prominently located, and on the level of detail about cost information required or permitted in the table.

DATES: The rule is effective September 27, 2000; compliance is mandatory as of October 1, 2001.

FOR FURTHER INFORMATION CONTACT: Deborah Stipick, Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452-3667 or 452-2412; for users of Telecommunications Device for the Deaf (TDD) only, contact Janice Simms at (202) 872-4984.

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of the Truth in Lending Act (TILA), 15 U.S.C. 1601 *et seq.*, is to promote the informed use of consumer credit by requiring disclosures about its

terms and cost. The Board's Regulation Z (12 CFR part 226) implements the act. The act requires creditors to disclose the cost of credit as a dollar amount (the finance charge) and as an annual percentage rate (the APR). Uniformity in creditors' disclosures is intended to assist consumers in comparison-shopping.

The Fair Credit and Charge Card Disclosure Act of 1988 (1988 Act) amended TILA generally to require that the APR and certain other terms (primarily applicable to purchase transactions) be disclosed in direct mail and certain other solicitations and applications to open credit and charge card accounts. The purpose of the 1988 Act was to ensure that consumers receive key cost information about credit and charge cards early enough to have the opportunity to comparison shop for such cards. The 1988 Act generally requires that card application and solicitation disclosures be provided in the form of a table (commonly referred to as the "Schumer box" after the law's chief sponsor) with headings for each item of information. The terms required to be in the table include: the name of the method used for calculating finance charges on an outstanding balance, any minimum finance charge per billing cycle, transaction fee, annual fee, grace period, and the APR for purchase transactions. The card issuer also must disclose any cash advance fee, late payment fee, or fee for exceeding a credit limit. These items may be either in the required table or clearly and conspicuously elsewhere. The applicable disclosures must also be provided for charge cards, which do not have a periodic rate that is used to compute a finance charge.

As with all TILA disclosures, the table is subject to the "clear and conspicuous" standard. Currently, the table meets the "clear and conspicuous" standard if the disclosures are in a "readily understandable form." There are no type-size requirements associated with this standard. The table is also required to be in a "prominent location" on or with the application or solicitation. Under the existing rules, this requirement is met if the table is "readily noticeable to the consumer" but the table need not be in any particular location to satisfy the requirement.

Over the years, the pricing of credit card programs has changed, and the cost disclosures accompanying card issuers' solicitations and applications have become more complex. Multiple APRs may apply to a single program. There may be a temporary introductory rate, a fixed or variable rate for all purchases

after the introductory period expires, and one or more "penalty rates" that apply if, for example, the consumer makes late payments. There may also be separate rates that apply to cash advances and balance transfers.

As interest rates and other account features have become more complex, and disclosures longer, some card issuers have compensated by using reduced type sizes for the table instead of allocating additional space for the disclosures. In such cases, consumers may have difficulty in using the table to readily identify key costs and terms. In contrast, the promotional materials that accompany the credit card application or solicitation may highlight a low introductory APR in a large, easy to read type size; oftentimes without the expiration date in close proximity. The APR in effect after the introductory rate expires typically is disclosed much less prominently—in a smaller type size—and it may only appear in the disclosure table and not at all in the promotional materials. The table may be in a location that is less likely to capture the consumer's attention, for example, on the reverse side of an application or on the last page of a multi-page solicitation.

Even with the format requirements, the current regulatory framework allows substantial flexibility in how and where disclosures are presented. While some card issuers' disclosures are fairly straightforward, other card issuers have created disclosures that are difficult for consumers to use. Accordingly, changes to the current regulatory scheme appear necessary to ensure that consumers receive meaningful disclosures on a more consistent basis, for comparison-shopping.

II. The Proposed Revisions

On May 24, 2000, the Board published proposed revisions to Regulation Z and the accompanying commentary to revise the disclosure requirements for credit and charge card solicitations and applications (65 FR 33499). The proposal was issued pursuant to the Board's authority under the 1988 Act to require disclosure of additional information or to modify disclosures required by the statute if the Board determines that such action is necessary to carry out the purposes of, or prevent evasions of the 1988 Act. See 15 U.S.C. 1637(c)(5). The proposed revisions were also issued under the Board's authority under section 105(a) of TILA to prescribe regulations to effectuate the purposes of TILA, to prevent circumvention or evasion, or to facilitate compliance. See 15 U.S.C. 1604(a).

Under the proposal, the APR applicable to purchase transactions would be subject to a type-size requirement, to highlight this information. It would be in 18-point type and would appear with any introductory rate under a separate heading from other APRs, such as the penalty rate. The proposal also more strictly construes the requirement that disclosures be clear and conspicuous by requiring that information in the table be "readily noticeable," in addition to being reasonably understandable. As to type size, disclosures in at least 12-point type were deemed readily noticeable.

The proposal gave additional guidance on satisfying the current requirements that disclosures be prominently located. Under the proposal, disclosures would be prominently located if, for example, they are on the same page as an application or solicitation reply form, or on a separate insert with a reference to the insert on the application or reply form.

To avoid clutter, guidance was proposed to reduce the level of detail required or permitted in the table, and to promote the use of more concise language. For example, card issuers must disclose the penalty rate APR and the conditions under which a rate may be imposed such as when payments are late. Under the proposal, only the rate could be included in the table; all explanatory information must be located elsewhere. The Board also solicited comment on whether additional rates and fees should be disclosed in the table.

The Board received more than 250 comment letters. More than half of the comment letters were from consumers that addressed issues outside of the scope of the proposal. More than 80 comment letters were received regarding the proposed revisions. Most of these comments were from financial institutions and their representatives; about one-fourth were from individual consumers.

In general, most commenters supported the Board's effort to improve disclosures for credit and charge card applications and solicitations. Most industry commenters, however, objected to specific aspects of the proposal or requested clarification of the rules. In particular, industry commenters objected to the use of type-size requirements and stated that the use of italics, bolding, or similar means of making disclosures clear and conspicuous is preferable. They raised concerns about the prominent location standard and requested more flexibility in locating the table within an

application or solicitation. Most industry commenters were supportive of efforts to decrease clutter and use more concise language, and these commenters supported the removal of the penalty rate explanation from the table. They also opposed the inclusion of additional rates and fees in the table. A few industry commenters objected to the Board's proposal to remove the penalty rate explanation from the table and suggested that the disclosure might be overlooked if it were outside the table.

Consumers were generally supportive of the proposal including the stricter clear and conspicuous standard. Consumers that commented generally favored including in one location all rates and fees along with any explanation of how the rates and fees are charged. In particular, they favored including in the table the rate and fee for balance transfers and the cash advance APR.

III. Summary of Final Rule

As discussed below, the Board is adopting the revisions substantially as proposed in order to effectuate the purposes of the 1988 Act and promote more effective disclosure of the costs and terms in credit and charge card applications and solicitations. Some revisions have been made for clarity or in response to commenters' requests for guidance.

Under the final rules, the APR for purchases must be in at least 18-point type and must appear under a separate heading from other APRs, such as the penalty rates. The disclosures must be "readily noticeable," as well as in a "reasonably understandable form." As to type size, disclosures in at least 12-point type would be deemed readily noticeable. Additional guidance is provided for electronic communications to clarify that card issuers comply with the rules if disclosures are provided in the required form even though the consumer may view the disclosures in a different form.

The final rule provides additional guidance on the current requirement that disclosures be prominently located but has been modified from the proposal to provide additional flexibility. Disclosures are sufficiently prominent, for example, if they are on the same page as an application or solicitation reply form. If located elsewhere, the disclosures still would be considered prominently located if the application or solicitation reply form contains a clear and conspicuous reference to the location of the disclosures.

As proposed, guidance is provided on the level of detail required or permitted in the table. Under existing rules, the

table must include any increased penalty APR that will apply upon the occurrence of one or more specific events, such as a late payment or an extension of credit exceeding the credit limit. Card issuers must also provide a description of the specific events that can trigger an increase. To simplify the table, the existing commentary is revised so that only the penalty rates can appear inside the table; the explanatory information must appear outside the table.

Currently the regulation only requires disclosure of the APR for purchase transactions in the table. The final rule also requires disclosure of the APRs for cash advances and balance transfers in the table and the disclosure of balance transfer fees either in or outside the table, as is currently the case for cash advance, late payment, and over-the-limit fees.

Generally, updates to the Board's staff commentary are effective within 30 days of publication. Consistent with the requirements of section 105(d) of TILA, however, the Board typically provides an implementation period of six months or longer. During that period, compliance with the published update is optional so that creditors may adjust documents to accommodate TILA's disclosure requirements. Accordingly, compliance with the revised credit card provisions is mandatory as of October 1, 2001.

IV. Section-by-Section Analysis of the Final Rule

Subpart B—Open-End Credit

Section 226.5—General Disclosure Requirements

5(a) Form of Disclosures

Section 226.5(a)(1) states the general rule that TILA disclosures for open-end credit plans must be made clearly and conspicuously. Existing comment 5(a)(1)–1 interprets this standard to require disclosures to be in a "reasonably understandable form." Under the final rule, as proposed, this standard is more strictly construed for purposes of the disclosures required under § 226.5a for credit and charge card applications and solicitations. Accordingly, comment 5(a)(1)–1 is revised to reflect this fact, by including a cross-reference to the special rules for § 226.5a disclosures. See comments 5a(a)(2)–1 and –2.

Section 226.5(a)(2) n.9 provides that the APRs under § 226.5a need not be more conspicuous than other disclosures. Footnote 9 is revised by adding a cross-reference to reflect the special type-size rule under § 226.5a for

purchases APRs. Comment 5(a)(2)–1 is also revised to make a technical correction.

Section 226.5a—Credit and Charge Card Applications and Solicitations

5a(a) General Rules

5a(a)(2) Form of Disclosures

Disclosures that are required by § 226.5a must be clear and conspicuous and prominently located on or with an application or solicitation or other applicable document. Certain of these disclosures also are required to be in a table format. As proposed, comment 5a(a)(2)–1 is added to establish a stricter standard for satisfying the "clear and conspicuous" standard with respect to credit or charge card application or solicitation disclosures. Comment 5a(a)(2)–2 provides additional interpretative guidance on the requirement that certain disclosures be prominently located. Because the interpretations differ somewhat from those currently provided, they are intended to apply prospectively.

Currently, disclosures meet the "clear and conspicuous" requirement if they are reasonably understandable. To ensure that consumers receive meaningful disclosures on a consistent basis, comment 5a(a)(2)–1 provides that disclosures are clear and conspicuous if they are both reasonably understandable and readily noticeable.

Industry commenters that opposed the revision cited a variety of reasons including the belief that a court might apply the stricter construction of the clear and conspicuous standard under § 226.5a to other sections of Regulation Z. Consumers and their representatives generally favored the stricter construction and thought the revisions would assist consumers in comparison-shopping for credit and charge cards by making disclosures more noticeable.

Many commenters representing financial institutions expressed a belief that the stricter construction of the "clear and conspicuous" standard is unnecessary and the same result could be achieved through more rigorous enforcement of the existing standard. These commenters generally objected to the proposal's use of particular type-size examples. Under the final rule, comment 5a(a)(2)–1 provides, as proposed, that as to type size, disclosures are deemed to be readily noticeable if they are in at least 12-point type. A number of commenters stated that using the example of 12-point type to satisfy the standard would have the effect of establishing a minimum type-size requirement. Accordingly, some commenters suggested that the final rule

use 10-point type as the example of a conspicuous type size, or that the final rule includes additional language clarifying that some disclosures smaller than 12-point may also satisfy the rule. To address commenters' concerns, the comment states that disclosures printed in less than 12-point type do not automatically violate the standard. Disclosures in less than 8-point type, however, would likely be too small to satisfy the standard.

Some commenters requested further guidance on whether the new "clear and conspicuous standard" would apply only to information required to be disclosed in a tabular format, or to all disclosures required under § 226.5a. In response to the comment received, comment 226.5a(a)(2)–1 provides that the stricter clear and conspicuous standard applies to all § 226.5a disclosures.

Comment 5a(a)(2)–2 addresses the requirement that certain disclosures be prominently located. Currently, the standard does not require disclosures to be located in any particular location. For example, card issuers may locate disclosures that are required to be in a tabular format on the reverse side of an application or on the last page of a multi-page solicitation. Consumers may see the promotional materials and fill out the application without being aware that there is additional cost information elsewhere following the application.

Under the proposal, the table would have been deemed to be prominently located, for example, if it appeared on the same page as the application or solicitation reply form, or on a separate insert with a reference to the insert on the application or reply form. Many commenters, including both consumers and some financial institution representatives suggested that card issuers might favor the use of inserts instead of locating the table on the application or reply form. These commenters were concerned that inserts might be overlooked by consumers and they urged that the Board grant flexibility to card issuers that cannot fit their disclosures on the same page as the application. Commenters also requested additional guidance. For example, some suggested that disclosures on the reverse side of a one-page application might be considered to be on the same page as the application. (They would not; each side would be considered a separate page.)

In response to commenters' concerns, comment 5(a)(2)–2 provides additional flexibility. Disclosures that do not appear on the same page as the application or solicitation reply form will also be considered prominently

located if a clear and conspicuous reference to the location of the disclosures is on the application or solicitation reply form indicating that they contain additional information about rates, fees, and other costs, as applicable.

The revised comment clarifies that the tabular disclosures required under § 226.5a(b) must all appear on the same page. Disclosures required under § 226.5a(b)(8)–(11) that appear outside the table must start on the same page as the table but may continue on subsequent pages.

Electronic Disclosures—In September 1999, the Board published a proposal that would amend Regulation Z to authorize creditors to use electronic communication to deliver required disclosures. 64 FR 49722 (September 14, 1999). On June 30, 2000, the Electronic Signatures in Global and National Commerce Act was signed into law, which authorizes the use of electronic records to provide written disclosures to consumers. Pub. L. 106–229, 114 Stat. 464. That law is effective October 1, 2000.

The Board's proposal specifically requested comment on any guidance that may be needed when credit and charge card applications and solicitations are provided by electronic communication. The majority of commenters requested that the Board provide guidance in the final rule on the use of electronic disclosures for credit and charge card applications and solicitations. Some commenters requested clarification that electronically transmitting or posting the APR disclosures in the required type size is sufficient in light of the consumer's ability to alter the appearance of information received electronically. In response to commenters' concerns, comment 5a(a)(2)–1 indicates that if disclosures required by § 226.5a(b) are provided by electronic communication, they are judged for purposes of the clear and conspicuous standard based on the form in which they are provided even though they may be viewed by consumers in a different format.

Commenters also requested guidance on complying with the requirement that certain disclosures be "prominently located" when electronic media are used. This guidance has been provided in comment 5a(a)(2)–2. Electronic disclosures are deemed to be prominently located if they are posted on a web site and the application or solicitation reply form is linked to the disclosures in a manner that prevents the consumer from by-passing the disclosures before submitting the

application or reply form, or they are located on the same page as an application or solicitation reply form that contains a clear and conspicuous reference to the location of the disclosures and indicates that they contain rate, fee, and other cost information as applicable.

5a(b) Required Disclosures

Disclosure of Additional Rates and Fees—The table required under § 226.5a provides consumers with key cost information, grouped together in one place to facilitate consumers' use of the information for comparison-shopping. These disclosures are not intended to be as detailed as disclosures provided to consumers at account opening. At the time the 1988 Act was adopted, the primary focus was on cost disclosures for purchase transactions. Thus, under the current rules the APR and transaction fees for purchases must be disclosed in the table, but not the APR for cash advances.

Because the services and features offered with credit and charge cards have evolved in recent years, the disclosures required by the 1988 Act do not capture costs that are commonly assessed on such cards, such as the APR assessed on a balance transfer (which the card issuer may characterize as a cash advance). Accordingly, the Board solicited comment on whether consumers would be aided in comparison-shopping by having additional rates and fees disclosed in the table. In particular, commenters were asked to address whether the APR and transaction fee for balance transfers and the APR for cash advances should be included in the table.

Many of the consumers and consumer advocates supported the inclusion of additional rate and fee information. These commenters generally favored including the APR and transaction fee for balance transfers and the APR for cash advances. They noted that these card features are common and that disclosure of these terms aids consumers in more effective comparison-shopping. Industry commenters generally opposed the inclusion of new fees and rates. They believe that the application and solicitation disclosures are more likely to be effective if they are simpler. They are also concerned that adding new disclosures based on card issuer's current program features is likely to lead to further expansion of the disclosures in response to new trends in future industry card programs.

On balance, the Board believes that consumers seeking to comparison-shop would benefit from having the APR and

transaction fee for balance transfers and the APR for cash advances provided in a consistent and uniform manner along with other key cost information. Balance transfer features have become common and cash advance features are an integral part of many card programs. Frequently, these features are prominently listed by card issuers in their promotional materials, sometimes as part of an introductory offer that expires after several months. Consumers' ability to understand the offered terms is likely to be enhanced by more uniform disclosure of these terms, particularly as consumers become familiar with the new format. Accordingly, § 226.5a(b)(1) has been revised to include the APR for cash advances and balance transfers in the tabular disclosures. Under the final rule, § 226.5a(b)(11) has also been added to provide that a balance transfer fee must also be disclosed, either in the table, or clearly or conspicuously elsewhere.

APR for Purchase Transactions—Section 226.5a(b)(1) requires card issuers to disclose in the table each periodic rate that may be used to compute the finance charge on an outstanding balance for purchases, expressed as an APR. The final rule is being adopted, as proposed, to require the APR for purchases to be disclosed in the table in at least 18-point type. This type-size requirement does not apply to temporary initial rates, that are lower than the APR that will apply after the temporary rate expires (to the extent such programs exist), or to penalty rates that result upon the occurrence of one or more specific events (such as a late payment or an extension of credit that exceeds the credit limit). See comment 5a(b)(1)–6. The APR for purchases must also appear with any introductory rate under a separate heading from other APRs, such as penalty rates, or rates for cash advances.

The Board proposed the use of this larger type size to highlight the significance of this information, particularly in light of the larger type sizes typically used by card issuers to promote introductory rates. Under existing rules, the APR information is often obscured due to the amount of other information provided in the table and the small type size used by some card issuers.

Consumers and consumer advocates generally believed that the type-size requirement is appropriate to ensure that the APR for purchases is clear and conspicuous. Industry commenters generally opposed the type-size requirement. Many of these commenters stated that the larger type size would place too much emphasis on the APR

for purchases even though consumers may have differing opinions regarding which disclosures are most important. Many industry commenters suggested that highlighting the APR for purchases in this manner would diminish the effectiveness of other disclosures in the table.

Some financial institutions contend that an increase in type size will increase paper and production costs, although few institutions attempted to quantify the cost. One financial institution estimated that under the new rule its paper costs would increase 7% annually. Some credit unions expressed concern regarding increased costs; however, many indicated that the increased costs could be avoided if the final rule does not become effective for at least six months thereby, permitting them to use their existing stock of disclosures.

Overall, the benefits of requiring 18-point type in disclosing the APR for purchases seem to outweigh any potential adverse effects. Even though some consumers comparison-shop for credit and charge cards based on a variety of features, the APR for purchases remains one of the key features that consumers consider. Moreover, many card issuers use larger than 18-point type to promote introductory APRs and other features in their credit and charge card promotional materials. Also, to aid consumers in better understanding the rates being imposed on a card account, card issuers are encouraged to disclose, in close proximity with any introductory rate being promoted, the period of time that the rate is in effect, and the post-introductory APR for purchases.

Rules to Simplify the Table—Card issuers are required to disclose “penalty rates” in the table, along with a description of the specific events that can trigger a rate increase and any index or margin used to determine the penalty rate. Under existing comment 5a(b)(1)–7, card issuers have the option of including this information inside the table or elsewhere. To simplify the table, the comment has been revised to provide that only the penalty rate should appear inside the table; the explanatory information must appear outside the table. Card issuers must use an asterisk or other means to direct the consumer to the additional information.

Most commenters believed that removing the explanatory information from the table would decrease clutter and promote the use of concise language in the table. A few consumers, however, stated that the significant impact of penalty rates justifies leaving the explanation in the table to prevent it

from being overlooked. The Board has determined that consumers are more likely to notice the penalty APRs if the table is uncluttered by removing the explanatory information. Moreover, the stricter interpretation of the “clear and conspicuous” standard should ensure that the explanatory information appears outside in a readily noticeable form.

Appendices G and H to Part 226—Open-end and Closed-End Model Forms and Clauses

Revisions to comment App. G and H–1 are adopted, as proposed, to clarify that there are special rules for disclosures required under § 226.5a for applications and solicitations for credit and charge cards.

Appendix G to Part 226—Open-end Model Forms and Clauses

The Board provides model forms to aid compliance with the disclosure requirements of § 226.5a(b). See Appendix G–10(A)–(C). Model form G–10(A) is revised and model form G–10(B) has been removed as unnecessary. A new sample form G–10(B) is added to illustrate an account with an introductory rate and a penalty rate. The forms also reflect the inclusion of the cash advance APR, balance transfer APR, and the balance transfer fee. Also comment G–5 is revised to clarify that there are format and sequence requirements for certain § 226.5a disclosures.

V. Regulatory Flexibility Analysis

In accordance with section 3(a) of the Regulatory Flexibility Act, the Board has reviewed the amendments to Regulation Z. The amendments require creditors to use a specific type size for the APR for purchases, to add the APR and fee for balance transfers and the APR for cash advances; to provide supplemental information about penalty rates outside the table; and to locate the table on the same page as the application or solicitation reply form, or elsewhere with a reference in the application or reply form to the location and content of the disclosures.

Some smaller financial institutions, particularly credit unions, expressed concerns that the need to revise disclosures to comply would increase costs; however, costs could be minimized by delaying the mandatory compliance date for at least six months thereby permitting them to utilize existing stocks of disclosures. Since the mandatory compliance date is October 1, 2001, the amendments do not have any significant impact on small entities beyond these initial revisions.

VI. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the rule under the authority delegated to the Board by the Office of Management and Budget. The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB control number. The OMB control number is 7100-0199.

The collection of information that is revised by this rulemaking is found in 12 CFR part 226 and in Appendices F, G, H, J, K, and L. This information is mandatory (15 U.S.C. 1601 *et seq.*) to evidence compliance with the requirements of Regulation Z and the Truth in Lending Act (TILA). The respondents/recordkeepers are for-profit financial institutions, including small businesses. Institutions are required to retain records for twenty-four months. This regulation applies to all types of creditors, not just state member banks; however, under Paperwork Reduction Act regulations, the Federal Reserve accounts for the burden of the paperwork associated with the regulation only for state member banks. Other agencies account for the paperwork burden on their respective constituencies under this regulation.

The revisions require creditors to revise disclosures for credit card solicitations and applications by: (1) Requiring an 18-point type-size for the APR for purchase transactions, (2) requiring creditors to provide supplemental information about penalty rates outside the table, (3) requiring disclosure of the APR and fee for balance transfers and cash advance APR, and (4) requiring that such table be located on the same page as the application or solicitation reply form or elsewhere with a reference to the location on the application or reply form. Although the final rule adds these requirements, it is expected that these revisions would not significantly increase the paperwork burden of creditors. With respect to state member banks, it is estimated that there are 988 respondent/recordkeepers and an average frequency of 136,294 responses per respondent each year. Therefore, the current amount of annual burden is estimated to be 1,863,754 hours. Because these revisions modify preexisting tables, there is estimated to be no additional annual cost burden and no capital or start-up cost.

Because the records would be maintained at state member banks and the notices are not provided to the

Federal Reserve, no issue of confidentiality under the Freedom of Information Act arises; however, any information obtained by the Federal Reserve may be protected from disclosure under exemptions (b)(4), (6), and (8) of the Freedom of Information Act (5 U.S.C. 522 (b)(4), (6) and (8)). The disclosures and information about error allegations are confidential between creditors and the customer.

The Federal Reserve has a continuing interest in the public's opinion of our collections of information. At any time, comments regarding the burden estimates, or any other aspect of this collection of information, including suggestions for reducing the burden estimate, may be sent to: Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, DC 20551; and to the Office of Management and Budget, Paperwork Reduction Project (7100-0199), Washington, DC 20503.

List of Subjects in 12 CFR Part 226

Advertising, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Truth in lending.

For the reasons set forth in the preamble, the Board amends Regulation Z, 12 CFR part 226, as set forth below:

PART 226—TRUTH IN LENDING (REGULATION Z)

1. The authority citation for part 226 continues to read as follows:

Authority: 12 U.S.C. 3806; 15 U.S.C. 1604 and 1637(c)(5).

Subpart B—Open-End Credit

2. Section 226.5 is amended by revising footnote 9 to read as follows:

Section 226.5 General disclosure requirements.

* * * * *

⁹ The terms need not be more conspicuous when used under § 226.5a generally for credit and charge card applications and solicitations under § 226.7(d) on periodic statements, under § 226.9(e) in credit and charge card renewal disclosures, and under § 226.16 in advertisements. (But see special rule for annual percentage rate for purchases, § 226.5a(b)(1).)

3. Section 226.5a is amended by:

- a. Revising paragraphs (a)(2)(ii), (a)(5), (b) introductory text and (b)(1) introductory text; and
- b. Adding a new paragraph (b)(11).

§ 226.5a Credit and charge card applications and solicitations.

* * * * *

(a) * * *

(a)(2) *Form of disclosures.* * * *

(ii) The disclosures in paragraphs (b)(8) through (11) of this section shall be provided either in the table containing the disclosures in paragraphs (b)(1) through (7), or clearly and conspicuously elsewhere on or with the application or solicitation.

* * * * *

(a)(5) *Certain fees that vary by state.*

If the amount of any fee referred to in paragraphs (b)(8) through (11) of this section varies from state to state, the card issuer may disclose the range of the fees instead of the amount for each state, if the disclosure includes a statement that the amount of the fee varies from state to state.

(b) *Required disclosures.* The card issuer shall disclose the items in this paragraph on or with an application or a solicitation in accordance with the requirements of paragraphs (c), (d), or (e) of this section. A credit card issuer shall disclose all applicable items in this paragraph except for paragraph (b)(7) of this section. A charge card issuer shall disclose the applicable items in paragraphs (b)(2), (4), and (7) through (11) of this section.

(1) *Annual percentage rate.* Each periodic rate that may be used to compute the finance charge on an outstanding balance for purchases, a cash advance, or a balance transfer, expressed as an annual percentage rate (as determined by § 226.14(b)). When more than one rate applies for a category of transactions, the range of balances to which each rate is applicable shall also be disclosed. The annual percentage rate for purchases disclosed pursuant to this paragraph shall be in at least 18-point type, except for the following: a temporary initial rate that is lower than the rate that will apply after the temporary rate expires, and a penalty rate that will apply upon the occurrence of one or more specific events.

* * * * *

(11) *Balance transfer fee.* Any fee imposed to transfer an outstanding balance.

* * * * *

4. Appendix G to Part 226 is amended by:

- a. Revising the table of contents at the beginning of the appendix;
- b. Revising Model G-10(A); and
- c. Removing Model G-10(B) and adding a new Sample G-10(B) in its place.

Appendix G To Part 226—Open-End Model Forms and Clauses

G-1 Balance-Computation Methods Model Clauses (§§ 226.6 and 226.7)

G-2 Liability for Unauthorized Use Model Clause (§ 226.12)

G-3 Long-Form Billing-Error Rights Model Form (§§ 226.6 and 226.9)
 G-4 Alternative Billing-Error Rights Model Form (§ 226.9)
 G-5 Rescission Model Form (When Opening an Account) (§ 226.15)
 G-6 Rescission Model Form (For Each Transaction) (§ 226.15)
 G-7 Rescission Model Form (When Increasing the Credit Limit) (§ 226.15)
 G-8 Rescission Model Form (When Adding a Security Interest) (§ 226.15)
 G-9 Rescission Model Form (When Increasing the Security) (§ 226.15)

G-10(A) Applications and Solicitations Model Forms (Credit Cards) (§ 226.5a(b))
 G-10(B) Applications and Solicitations Sample (Credit Card) (§ 226.5a(b))
 G-10(C) Applications and Solicitations Model Form (Charge Cards) (§ 226.5a(b))
 G-11 Applications and Solicitations Made Available to General Public Model Clauses (§ 226.5a(e))
 G-12 Charge Card Model Clause (When Access to Plan Offered by Another) (§ 226.5a(f))

G-13(A) Change in Insurance Provider Model Form (Combined Notice) (§ 226.9(f))
 G-13(B) Change in Insurance Provider Model Form (§ 226.9(f)(2))
 G-14A Home Equity Sample
 G-14B Home Equity Sample
 G-15 Home Equity Model Clauses
 * * * * *

BILLING CODE 6210-01-P

G-10(A)—Applications and Solicitations Model Form (Credit Cards)

Annual percentage rate (APR) for purchases	_____ % until (expiration date), after that, _____ %
Other APRs	Balance transfer APR: _____ % Cash advance APR: _____ % Penalty APR: _____ % See explanation below*
Variable-rate information	Your APR may vary. The rate for [purchases] [cash advances][balance transfers] is determined by (explanation). See explanation below**
Grace period for repayment of balances for purchases	[__ days] [until ____] [not less than __ days] [between __ and __ days] [__ days on average] [You have no grace period in which to repay your balance for purchases before a finance charge will be imposed.]
Method of computing the balance for purchases	
Annual fees	[Annual] [Membership] fee: \$ _____ per year [(type of fee): \$ _____ per year] [(type of fee): \$ _____]
Minimum finance charge	\$ _____
Transaction fee for purchases	[\$ _____] [_____ % of _____]
Transaction fee for cash advances:	[\$ _____] [_____ % of _____]
Balance transfer fee:	[\$ _____] [_____ % of _____]
Late-payment fee:	[\$ _____] [_____ % of _____]
Over-the-credit-limit fee:	\$ _____

* Explanation of penalty.

**Explanation of variable rate.

G-10(B)—Applications and Solicitations Sample (Credit Cards)

Annual percentage rate (APR) for purchases	2.9% until 11/1/00, after that, 14.9%
Other APRs	Cash advance APR: 15.9% Balance transfer APR: 15.9% Penalty rate: 23.9%. See explanation below.*
Variable-rate information	Your APR for purchase transactions may vary. The rate is determined monthly by adding 5.9% to the Prime Rate**
Grace period for repayment of balances for purchases	25 days on average
Method of computing the balance for purchases	Average daily balance (excluding new purchases)
Annual fees	None
Minimum finance charge	\$.50
Transaction fee for cash advances: 3% of the amount advanced Balance transfer fee: 3% of the amount transferred Late-payment fee: \$ 25 Over-the-credit-limit fee: \$ 25	

* Explanation of penalty.

** The Prime Rate used to determine your APR is the rate published in _____ on the ____ day of the prior month.

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* * * * *

5. In Supplement I to Part 226, MAKE the following amendments:

a. Under *Section 226.5—General Disclosure Requirements*, under *Paragraph 5(a)(1)*, paragraph 1. introductory text is revised;

b. Under *Section 226.5—General Disclosure Requirements*, under *Paragraph 5(a)(2)*, the first sentence in paragraph 1 is revised;

c. Under *Section 226.5a—Credit and Charge Card Applications and Solicitations*, under *5a(a)(2) Form of Disclosures*, paragraph 1 through paragraph 6 are redesignated as paragraph 2 through paragraph 7 respectively, a new paragraph 1 is added, and newly designated paragraph 2 is revised.

d. Under *Section 226.5a—Credit and Charge Card Applications and Solicitations*, under *5a(b)(1) Annual*

Percentage Rate, paragraphs 6 and 7 are revised.

e. Under *Appendices G and H—Open-End and Closed-End Model Forms and Clauses*, a new sentence is added after the second sentence in paragraph 1.

f. Under *Appendix G—Open-end Model Forms and Clauses*, paragraph 5 is revised.

SUPPLEMENT I TO PART 226—OFFICIAL STAFF INTERPRETATIONS

* * * * *

Subpart B—End Credit

§ 226.5—General Disclosure Requirements

5(a) Form of disclosures.
Paragraph 5(a)(1).

1. *Clear and conspicuous.* The *clear and conspicuous* standard requires that disclosures be in a reasonably understandable form. Except where otherwise provided, the standard does not require that disclosures be segregated from

other material or located in any particular place on the disclosure statement, or that numerical amounts or percentages be in any particular type size. (But see comments 5a(a)(2)–1 and –2 for special rules concerning § 226.5a disclosures for credit card applications and solicitations.) The standard does not prohibit:

* * * * *

Paragraph 5(a)(2).

1. *When disclosures must be more conspicuous.* The term *finance charge* and *annual percentage rate*, when required to be used with a number, must be disclosed more conspicuously than other required disclosures, except in the cases provided in footnote 9. * * *

* * * * *

Section 226.5a—Credit and Charge Card Applications and Solicitations

* * * * *

5a(a) General Rules

5a(a)(2) Form of Disclosures

1. *Clear and conspicuous standard.* For purposes of § 226.5a disclosures, *clear and*

conspicuous means in a reasonably understandable form and readily noticeable to the consumer. As to type size, disclosures in 12-point type are deemed to be readily noticeable for purposes of § 226.5a. Disclosures printed in less than 12-point type do not automatically violate the standard; however, disclosures in less than 8-point type would likely be too small to satisfy the standard. Disclosures that are transmitted by electronic communication are judged for purposes of the clear and conspicuous standard based on the form in which they are provided even though they may be viewed by the consumer in a different form.

2. *Prominent location.* i. *Generally.* Certain of the required disclosures provided on or with an application or solicitation must be prominently located. Disclosures are deemed to be prominently located, for example, if the disclosures are on the same page as an application or solicitation reply form. If the disclosures appear elsewhere, they are deemed to be prominently located if the application or solicitation reply form contains a clear and conspicuous reference to the location of the disclosures and indicates that they contain rate, fee, and other cost information, as applicable. Disclosures required by § 226.5a(b) that are placed outside the table must begin on the same page as the table but need not end on the same page.

ii. *Electronic disclosures.* Electronic disclosures are deemed to be prominently located if:

A. They are posted on a web site and the application or solicitation reply form is linked to the disclosures in a manner that prevents the consumer from by-passing the disclosures before submitting the application or reply form; or

B. They are located on the same page as an application or solicitation reply form, that contains a clear and conspicuous reference to the location of the disclosures and indicates that they contain rate, fee, and other cost information, as applicable.

* * * * *

5a(b) Required Disclosures

5a(b)(1) Annual Percentage Rate

* * * * *

6. *Introductory rates—premium rates.* If the initial rate is temporary and is higher than the permanently applicable rate, the card issuer must disclose the initial rate in the table. The initial rate must be in at least 18-point type unless the issuer also discloses in the table the permanently applicable rate. The issuer may disclose in the table the permanently applicable rate that would otherwise apply if the issuer also discloses the time period during which the initial rate will remain in effect. In that case, the permanently applicable rate must be in at least 18-point type.

7. *Increased penalty rates.* If the initial rate may increase upon the occurrence of one or more specific events, such as a late payment or an extension of credit that exceeds the credit limit, the card issuer must disclose in the table the initial rate and the increased penalty rate that may apply. If the penalty rate is based on an index and an increased

margin, the issuer must also disclose in the table the index and the margin as well as the specific event or events that may result in the increased rate, such as “applies to accounts 60 days late.” If the penalty rate cannot be determined at the time disclosures are given, the issuer must provide an explanation of the specific event or events that may result in imposing an increased rate. In describing the specific event or events that may result in an increased rate, issuers need not be as detailed as for the disclosures required under § 226.6(a)(2). For issuers using a tabular format, the specific event or events must be placed outside the table and an asterisk or other means shall be used to direct the consumer to the additional information. At its option, the issuer may include in the explanation of the penalty rate the period for which the increased rate will remain in effect, such as “until you make three timely payments.” The issuer need not disclose an increased rate that is imposed when credit privileges are permanently terminated.

* * * * *

Appendices G and H—Open-End and Closed-End Model Forms and Clauses

1. *Permissible changes.* * * * (But see Appendix G comment 5 for special rules concerning certain disclosures required under § 226.5a for credit and charge card applications and solicitations). * * *

* * * * *

APPENDIX G—OPEN-END MODEL FORMS AND CLAUSES

* * * * *

5. Model G–10(A), Sample G–10(B) and Model G–10(C). i. Model G–10(A) and Sample G–10(B) illustrate, in the tabular format, all of the disclosures required under § 226.5a for applications and solicitations for credit cards other than charge cards. Model G–10(B) is a sample disclosure illustrating an account with a lower introductory rate and penalty rate. Model G–10(C) illustrates the tabular format disclosure for charge card applications and solicitations and reflects all of the disclosures in the table.

ii. Except as otherwise permitted, disclosures must be substantially similar in sequence and format to model forms G–10(A) and (C). The disclosures may, however, be arranged vertically or horizontally and need not be highlighted aside from being included in the table. While proper use of the model forms will be deemed in compliance with the regulation, card issuers are permitted to use headings and disclosures other than those in the forms (with an exception relating to the use of “grace period”) if they are clear and concise and are substantially similar to the headings and disclosures contained in model forms. For further discussion of requirements relating to form, see the commentary to § 226.5a(a)(2).

* * * * *

By order of the Board of Governors of the Federal Reserve System, September 27, 2000.

Jennifer J. Johnson,
Secretary of the Board.

[FR Doc. 00–25316 Filed 10–2–00; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 742 and 774

[Docket No. 000920265–0265–01]

RIN 0694–AC13

Revisions and Clarifications to the Commerce Control List; Chemical and Biological Weapons Controls; Australia Group

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: This final rule amends the Commerce Control List (CCL) of the Export Administration Regulations to implement an October 1999 Australia Group agreement to clarify the scope of controls on saxitoxin, toxic gas monitoring systems, and cross-flow filtration equipment, as well as clarifying the application of the rule for mixtures containing Australia Group (AG) chemicals that are also identified as Schedule 1 chemicals under the Chemical Weapons Convention. The final rule also amends the CCL to authorize, without a license, exports of certain medical products containing botulinum toxin, and certain diagnostic and food testing kits that contain AG-controlled toxins. Finally, this final rule amends the CCL to add titanium carbide and silicon carbide to the list of construction materials for heat exchangers. Restrictions on chemicals and toxins that are also controlled for CW (Chemical Weapons Convention) purposes continue to apply. This rule will result in an overall decreased licensing burden on U.S. industry.

EFFECTIVE DATE: This rule is effective: October 3, 2000.

FOR FURTHER INFORMATION CONTACT: James Seevaratnam, Director, Chemical and Biological Controls Division, Bureau of Export Administration, (202) 501–7900.

SUPPLEMENTARY INFORMATION:

Background

On October 7, 1999, the Bureau of Export Administration (BXA) published a final rule amending the Export Administration Regulations (EAR) to implement the October 1998 Australia Group agreement to amend controls on toxic gas monitoring systems and to amend the CCL to authorize, without a license, exports of medical products containing controlled biological toxins that are developed, packaged and sold for medical treatment.

The Australia Group (AG), a multilateral forum that coordinates export controls to curtail the proliferation of chemical and biological weapons, held its annual consultations in Paris, October 4–8, 1999. The 30 AG participating countries agreed to maintain export controls on a list of chemicals, biological agents, relevant equipment and technology that could be used in the production of chemical or biological weapons. The AG reviews items on its control list periodically to enhance the effectiveness and achieve greater harmonization of participating governments' national controls.

At the October 1999 Australia Group consultations, participants agreed to further revise the control list entry for toxic gas monitoring systems to clarify the scope of controls. To implement this agreement, this final rule amends the Commerce Control List (CCL) of the Export Administration Regulations (EAR) by revising Export Control Classification Number (ECCN) 2B351. Specifically, this rule clarifies that the control of toxic gas monitoring systems under ECCN 2B351 applies only to such systems that operate on line without any requirement for human intervention. The AG agreed that the intent of this control is to control systems capable of detecting toxic gases in environments such as a chemical plant rather than batch-mode operation equipment that is normally used in a laboratory. While not changing the scope of the control in any way, this rule also clarifies the description of cross-flow filtration equipment in ECCN 2B352 by describing it as cross (tangential) flow filtration equipment. In an expansion of controls, the Australia Group agreed to add titanium carbide and silicon carbide to the list of materials describing heat exchangers subject to control in ECCN 2B350.

The Department of Commerce also maintains controls on exports of biological agents that could be used in the production of biological weapons. These materials require a license under ECCN 1C351 for export and reexport for CB (chemical and biological weapons) reasons to all destinations, except Canada. These controls are implemented in accordance with the export control provisions of the Australia Group. Note that two biological agents, ricin and saxitoxin, classified as ECCN 1C351.d.5 and .d.6, respectively, are Schedule 1 chemicals under the Chemical Weapons Convention and are also controlled for CW reasons to all destinations, including Canada.

As agreed by the AG, medical products that contain the AG-controlled

botulinum toxin that are pharmaceutical formulations designed for human administration in the treatment of medical conditions have broad medical applications while posing no significant proliferation concerns. Such products are controlled under ECCN 1C991 and may be exported and reexported without a license to all destinations and entities, except terrorist supporting countries (Cuba, Iran, Iraq, Libya, North Korea, Sudan, Syria) and Serbia, and except as provided in Parts 736 and 744 of the EAR. This further liberalization of licensing requirements for the botulinum toxin does not apply if the botulinum toxin is to be exported in any other configuration, including bulk shipments, or for any other end-uses, in which case it is still controlled under ECCN 1C351.

In addition, this final rule further amends ECCN 1C991 to clarify the criteria for defining an item containing botulinum toxin as a medical product when approved by the Food and Drug Administration (FDA) for distribution in interstate commerce as a medical product. Specifically, the medical product must be: (1) Pharmaceutical formulations designed for human administration in the treatment of medical conditions; (2) prepackaged for distribution as medical products; and, (3) approved by the Food and Drug Administration to be marketed as medical products.

Further, this rule removes controls on certain diagnostic and food testing kits that contain toxins controlled by the AG. Specifically, this final rule amends ECCN 1C991 to include diagnostic and food testing kits containing AG-controlled toxins controlled under ECCN 1C351. Such testing kits may be exported and reexported without a license to all destinations and entities, except to terrorist supporting countries and Serbia, and except as provided in Parts 736 and 744 of the EAR, when the kits are specifically developed, packaged, and marketed for diagnostic or public health purposes. Diagnostic and food testing kits containing CW-controlled toxins continue to be controlled under ECCN 1C351 to all destinations, including Canada.

This rule clarifies that the scope of AG-controls on saxitoxin under 1C351.d.6 applies only to saxitoxin and not the entire family of paralytic shellfish poisons (*e.g.*, neosaxitoxin) which, other than saxitoxin, are classified under EAR99. This rule also clarifies the forms of saxitoxin and ricin that are controlled for CW reasons under ECCN 1C351.

Finally, the AG agreed to the development of a rounding rule for

mixtures that contain trace and unintended quantities of AG-controlled chemicals that are also on CWC Schedule 1 listed in ECCN 1C350. The United States is providing a "round to zero" rule for Schedule 1 chemicals similar to that agreed by the AG. This rule, currently set forth in section 712.1 of the Chemical Weapons Convention Regulations, is now added to the note under 1C350 on mixtures. The licensing requirements do not apply to mixtures containing less than 0.5% aggregate quantities of Schedule 1 chemicals as unavoidable by-products or impurities, and the Schedule 1 chemicals are not intentionally produced or added.

Exporters are reminded that although license requirements have been removed for shipments of the medical products and test kits for CB reasons as described above, these items continue to require a license under 1C991 for export or reexport to terrorist supporting and embargoed destinations and entities. Exporters may also need to consult with the Department of the Treasury's Office of Foreign Assets Control, which administers economic sanctions against certain countries and entities, including the Taliban controlled areas of Afghanistan.

Although the EAA expired on August 20, 1994, the President invoked the International Emergency Economic Powers Act and continued in effect the Export Administration Regulations and, to the extent permitted by law, the provisions of the EAA in Executive Order 12924 of August 19, 1994, as extended by the President's notices of August 15, 1995 (60 FR 42767), August 14, 1996 (61 FR 42527), August 13, 1997 (62 FR 43629), August 13, 1998 (63 FR 44121), August 10, 1999 (64 FR 44101) and August 8, 2000 (65 FR 48347).

Rulemaking Requirements

1. This final rule has been determined to be not significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid Office of Management and Budget Control Number. This rule involves a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control numbers 0694–0088, "Multi-Purpose Application," which carries a burden hour estimate of 45 minutes for a

manual submission and 40 minutes for an electronic submission.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Kirsten Mortimer, Office of Exporter Services, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Parts 742 and 774

Exports, foreign trade.

Accordingly, 15 CFR Chapter 7, Subchapter C, is amended as follows:

1. The authority citation for 15 CFR part 742 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; Notice of November 12, 1998, 63 FR 63589, 3 CFR, 1998 Comp., p. 305; Notice of August 3, 2000 (65 FR 48347, August 8, 2000).

2. The authority citation for 15 CFR part 774 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p.

228; Notice of August 3, 2000 (65 FR 48347, August 8, 2000).

PART 742—[AMENDED]

3. Section 742.18 is amended by revising paragraph (a)(1) as follows:

§ 742.18 Chemical Weapons Convention (CWC or Convention)

* * * * *

(a) * * *

(1) Schedule 1 chemicals identified in ECCNs 1C350 and 1C351. A license is required for CW reasons for exports and reexports of Schedule 1 chemicals identified under ECCN 1C350.a.20, a.24, and a.31 and ECCN 1C351.d.5 and d.6 to all destinations *including* Canada. CW applies to 1C351.d.5 for ricin in the form of Ricinus Communis Agglutinin II (RCA II), also known as ricin D or Ricinus Communis Lectin III (RCL III); and Ricinus Communis Lectin IV (RCL IV), also known as ricin E. CW applies to 1C351.d.6 for saxitoxin identified by C.A.S. #35523-89-8. Also see the advance notification procedures and annual reporting requirements described in § 745.1 of the EAR.

* * * * *

PART 774—[AMENDED]

4. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Materials, Chemicals, “Microorganisms,” and “Toxins”, Export Control Classification Numbers (ECCNs) are amended:

- a. By revising the License Requirements section for ECCN 1C350;
- b. By revising ECCN 1C351; and
- c. By revising ECCN 1C991, as follows:

1C350 Chemicals, that may be used as precursors for toxic chemical agents.

License Requirements

Reason for Control: CB, CW, AT

Control(s)	Country chart
CB applies to entire entry ..	CB Column 2

CW applies to 1C350.a.2, a.3, a.5, a.6, a.7, a.8, a.10, a.11, a.12, a.13, a.15, a.16, a.17, a.20, a.21, a.22, a.23, a.24, a.28, a.29, a.30, a.31, a.32, a.33, a.35, a.37, a.41, a.47, a.48, a.49, a.50, a.51, a.53, or a.54. For 1C350.a.20, a.24 and a.31, a license is required for CW reasons for all destinations, including Canada. For all other chemicals controlled for CW reasons, a license is required for export to countries not listed in Supplement No. 2 to part 745, except for Schedule 3 chemicals which do not require a license for CW reasons if an

End-Use Certificate has been obtained from the government of the importing country. See § 742.18 of the EAR. Also, see § 745.2 of the EAR for End-Use Certificate requirements. The Commerce Country Chart is not designed to determine licensing requirements for items controlled for CW reasons.

AT applies to entire entry AT Column 1

License Requirement Notes:

1. **SAMPLE SHIPMENTS:** Certain sample shipments of chemicals controlled under ECCN 1C350 may be made without a license, as provided by the following:

a. **Chemicals Not Eligible:** No CWC Schedule 1 chemical is eligible for sample shipment without a license. Therefore, the following chemicals are *not* eligible for sample shipments: 0-Ethyl-2-diisopropylaminoethyl methylphosphonite (QL) (C.A.S. #57856-11-8), Ethylphosphonyl difluoride (C.A.S. #753-98-0), and Methylphosphonyl difluoride (C.A.S. #676-99-3).

b. **Countries Not Eligible:** The following countries are not eligible to receive any sample shipments: Cuba, Iran, Iraq, Libya, North Korea, Sudan, Syria.

c. **Sample Shipments:** A license is not required for sample shipments when the cumulative total of these shipments does not exceed a 55-gallon container or 200 kg of each chemical to any one consignee per calendar year. Multiple sample shipments, in any quantity, not exceeding the totals indicated in this paragraph may be exported without a license, in accordance with the provisions of this Note 1. A consignee that receives a sample shipment under this exclusion may not resell, transfer, or reexport the sample shipment, but may use the sample shipment for any other legal purpose unrelated to chemical weapons. However, a sample shipment exported and received under this exclusion remains subject to all General Prohibitions including the end-use restriction described in § 744.4 of the EAR. Sample shipments of chemicals included in CWC Schedule 2 and controlled for CW reasons to non-CWC States Parties (destinations not listed in Supplement No. 2 to part 745 of the EAR) may not be made without a license. Sample shipments of chemicals listed in Schedule 3 and controlled for CW reasons to non-States Parties may not be made without first obtaining an End-Use Certificate, as described in § 745.2 of the EAR. If no End-Use Certificate is obtained pursuant to § 745.2 of the EAR, a license is required for sample shipments to non-

CWC States Parties of Schedule 3 chemicals controlled under ECCN 1C350 for CW reasons.

d. The exporter is required to submit a quarterly written report for shipments of samples made under this Note 1. The report must be on company letterhead stationery (titled "Report of Sample Shipments of Chemical Precursors" at the top of the first page) and identify the chemical(s), Chemical Abstract Service Registry (C.A.S.) number(s), quantity(ies), the ultimate consignee's name and address, and the date exported. The report must be sent to the U.S. Department of Commerce, Bureau of Export Administration, P.O. Box 273, Washington, DC 20044, Attn: "Report of Sample Shipments of Chemical Precursors".

2. **MIXTURES:** Mixtures controlled by this entry that contain certain concentrations of precursor and intermediate chemicals are subject to the following licensing requirements:

a. A license is required, regardless of the concentrations in the mixture, for the following chemicals: 0-Ethyl-2-diisopropylaminoethyl methylphosphonite (QL) (C.A.S.#57856-11-8), Ethylphosphonyl difluoride (C.A.S.#753-98-0) and Methylphosphonyl difluoride (C.A.S.#676-99-3), unless the mixture contains less than 0.5% aggregate quantities of Schedule 1 chemicals as unavoidable by-products or impurities, and the Schedule 1 chemicals are not intentionally produced or added.

b. A license is required when at least one of the following chemicals constitutes more than 10 percent of the weight of the mixture: Arsenic trichloride (C.A.S.#7784-34-1), Benzilic acid (C.A.S.#76-93-7), Diethyl ethylphosphonate (C.A.S.#78-38-6), Diethyl methylphosphonite (C.A.S.#15715-41-0), Diethyl-N,N-dimethylphosphoroamidate (C.A.S.#2404-03-7), N,N-Diisopropyl-beta-aminoethane thiol (C.A.S.#5842-07-9), N,N-Diisopropyl-2-aminoethyl chloride hydrochloride (C.A.S.#4261-68-1), N,N-Diisopropyl-beta-aminoethanol (C.A.S.#96-80-0), N,N-Diisopropyl-beta-aminoethyl chloride (C.A.S.#96-79-7), Dimethyl ethylphosphonate (C.A.S.#6163-75-3), Dimethyl methylphosphonate (C.A.S.#756-79-6), Ethylphosphonous dichloride [Ethylphosphinyl dichloride] (C.A.S.#1498-40-4), Ethylphosphonous difluoride [Ethylphosphinyl difluoride]

(C.A.S.#430-78-4), Ethylphosphonyl dichloride (C.A.S.#1066-50-8), Methylphosphonous dichloride [Methylphosphinyl dichloride] (C.A.S.#676-83-5), Methylphosphonous difluoride [Methylphosphinyl difluoride] (C.A.S.#753-59-3), Methylphosphonyl dichloride (C.A.S.#676-97-1), Pinacolyl alcohol (C.A.S.#464-07-3), 3-Quinuclidinol (C.A.S.#1619-34-7), and Thiodiglycol (C.A.S.#111-48-8) (Related ECCN: 1C995);

c. A license is required when at least one of all other chemicals in the List of Items Controlled under ECCN 1C350 constitutes more than 25 percent of the weight of the mixture (related ECCN: 1C995); and

d. A license is not required under this entry for mixtures when the controlled chemical is a normal ingredient in consumer goods packaged for retail sale for personal use. Such consumer goods are classified as EAR99.

Note to Mixtures: Calculation of concentrations of AG-controlled chemicals:

a. *Exclusion.* No chemical may be added to the mixture (solution) for the sole purpose of circumventing the Export Administration Regulations;

b. *Absolute Weight Calculation.* When calculating the percentage, by weight, of components in a chemical mixture, include all components of the mixture, including those that act as solvents;

c. *Example.*

11% chemical listed in paragraph b. of Note 2.

39% chemical not listed in Note 2

50% Solvent

100% Mixture

11/100=11% chemical listed in paragraph b. of Note 2.

In this example, a license is required because a chemical listed in paragraph b. of Note 2 constitutes more than 10 percent of the weight of the mixture.

3. **COMPOUNDS.** A license is not required under this entry for chemical compounds created with any chemicals identified in this entry, unless those compounds are also identified in this entry.

Technical Notes: 1. For purposes of this entry, a "mixture" is defined as a solid, liquid or gaseous product made up of two or more components that do not react together under normal storage conditions.

2. The scope of this control applicable to Hydrogen Fluoride (Item 25 in List of Items Controlled) includes its liquid, gaseous, and aqueous phases, and hydrates.

LIST OF ITEMS CONTROLLED

* * * * *

1C351 Human pathogens, zoonoses, and "toxins", as follows (see List of Items Controlled).

License Requirements

Reason for Control: CB, CW, AT

Control(s)	Country chart
CB applies to entire entry ..	CB Column 1

CW applies to 1C351.d.5 and d.6 and a license is required for CW reasons for all destinations, including Canada, as follows: CW applies to 1C351.d.5 for ricin in the form of (1) Ricinus Communis Agglutinin_{II} (RCA_{II}), also known as ricin D or Ricinus Communis Lectin_{III} (RCL_{III}); and (2) Ricinus Communis Lectin_{IV} (RCL_{IV}), also known as ricin E. CW applies to 1C351.d.6 for saxitoxin identified by C.A.S. #35523-89-8. See § 742.18 of the EAR for licensing information pertaining to chemicals subject to restriction pursuant to the Chemical Weapons Convention (CWC). The Commerce Country Chart is not designed to determine licensing requirements for items controlled for CW reasons.

AT applies to entire entry. AT Column 1

License Exceptions

LVS: N/A

GBS: N/A

CIV: N/A

List of Items Controlled

Unit: \$ value.

Related Controls: Certain forms of ricin and saxitoxin in 1C351.d.5. and d.6 are CWC Schedule 1 chemicals (see § 742.18 of the EAR). The U.S. Government must provide advance notification and annual reports to the OPCW of all exports of Schedule 1 chemicals. See § 745.1 of the EAR for notification procedures. See 22 CFR part 121, Category XIV and § 121.7 for additional CWC Schedule 1 chemicals controlled by the Department of State. All vaccines and "immunotoxins" are excluded from the scope of this entry. Certain medical products and diagnostic and food testing kits that contain biological toxins controlled under paragraph (d) of this entry, with the exception of toxins controlled for CW reasons under d.5 and d.6, are excluded from the scope of this entry. Vaccines, "immunotoxins", certain medical products, and diagnostic and food testing kits excluded from the scope of this entry are controlled under ECCN 1C991. For the purposes of this entry, only saxitoxin is controlled under

paragraph d.6; other members of the paralytic shellfish poison family (e.g., neosaxitoxin) are classified as EAR99.

Related Definitions:(1) For the purposes of this entry "immunotoxin" is defined as an antibody-toxin conjugate intended to destroy specific target cells (e.g., tumor cells) that bear antigens homologous to the antibody. (2) For the purposes of this entry "subunit" is defined as a portion of the "toxin".

Items:

- a. Viruses, as follows:
 - a.1. Chikungunya virus;
 - a.2. Congo-Crimean haemorrhagic fever virus;
 - a.3. Dengue fever virus;
 - a.4. Eastern equine encephalitis virus;
 - a.5. Ebola virus;
 - a.6. Hantaan virus;
 - a.7. Japanese encephalitis virus;
 - a.8. Junin virus;
 - a.9. Lassa fever virus
 - a.10. Lymphocytic choriomeningitis virus;
 - a.11. Machupo virus;
 - a.12. Marburg virus;
 - a.13. Monkey pox virus;
 - a.14. Rift Valley fever virus;
 - a.15. Tick-borne encephalitis virus (Russian Spring-Summer encephalitis virus);
 - a.16. Variola virus;
 - a.17. Venezuelan equine encephalitis virus;
 - a.18. Western equine encephalitis virus;
 - a.19. White pox; or
 - a.20. Yellow fever virus.
- b. Rickettsiae, as follows:
 - b.1. Bartonella quintana (Rochalimea quintana, Rickettsia quintana);
 - b.2. Coxiella burnetii;
 - b.3. Rickettsia prowasecki; or
 - b.4. Rickettsia rickettsii.
- c. Bacteria, as follows:
 - c.1. Bacillus anthracis;
 - c.2. Brucella abortus;
 - c.3. Brucella melitensis;
 - c.4. Brucella suis;
 - c.5. Burkholderia mallei (Pseudomonas mallei);
 - c.6. Burkholderia pseudomallei (Pseudomonas pseudomallei);
 - c.7. Chlamydia psittaci;
 - c.8. Clostridium botulinum;
 - c.9. Francisella tularensis;
 - c.10. Salmonella typhi;
 - c.11. Shigella dysenteriae;
 - c.12. Vibrio cholerae;
 - c.13. Yersinia pestis.
- d. "Toxins", as follows: and "subunits" thereof:
 - d.1. Botulinum toxins;
 - d.2. Clostridium perfringens toxins;
 - d.3. Conotoxin;
 - d.4. Microcystin (cyanoginisin);
 - d.5. Ricin;

- d.6. Saxitoxin;
- d.7. Shiga toxin;
- d.8. Staphylococcus aureus toxins;
- d.9. Tetradotoxin;
- d.10. Verotoxin; or
- d.11. Aflatoxins.

1C991 Vaccines, immunotoxins, medical products, diagnostic and food testing kits, as follows (see List of Items controlled).

License Requirements

Reason for Control: CB, AT.

Control(s)	Country Chart
CB applies to 1C991.d	CB Column 3
AT applies to entire entry ..	AT Column 1

License Exceptions

LVS: N/A
GBS: N/A
CIV: N/A

List of Items Controlled

Unit: \$ value.

Related Controls: Medical products containing ricin in the form of (1) Ricinus Communis Agglutinin_{II} (RCA_{II}), also known as ricin D or Ricinus Communis Lectin_{III} (RCL_{III}); and (2) Ricinus Communis Lectin_{IV} (RCL_{IV}), also known as ricin E; and saxitoxin identified by C.A.S. #35523-89-8, are controlled for CW reasons under 1C351.

Related Definitions: For the purpose of this entry "immunotoxin" is defined as an antibody-toxin conjugate intended to destroy specific target cells (e.g., tumor cells) that bear antigens homologous to the antibody. For the purpose of this entry "medical products" are: (1) Pharmaceutical formulations designed for human administration in the treatment of medical conditions; (2) prepackaged for distribution as medical products; and, (3) approved by the Food and Drug Administration to be marketed as medical products. For the purpose of this entry, "diagnostic and food testing kits" are specifically developed, packaged and marketed for diagnostic or public health purposes. Biological toxins in any other configuration, including bulk shipments, or for any other end-uses are controlled by ECCN 1C351.

Items:

- a. Vaccines containing items controlled by ECCNs 1C351, 1C352, 1C353 and 1C354;
- b. Immunotoxins;
- c. Medical products containing botulinum toxins controlled by ECCN 1C351.d.1;
- d. Medical products containing biological toxins controlled by ECCN 1C351.d.2 through d.11, except

biological toxins controlled for CW reasons under 1C351.d.5 and d.6; and
e. Diagnostic and food testing kits containing biological toxins controlled by ECCN 1C351.d, except biological toxins controlled for CW reasons under ECCN 1C351.d.5 and d.6.

5. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2—Materials Processing, Export Control Classification Numbers (ECCNs) are amended:

- a. By revising the List of Items Controlled section for 2B350;
- b. By revising the entry heading and List of Items Controlled section for ECCN 2B351; and
- c. By revising the List of Items Controlled section for ECCN 2B352, as follows:

2B350 Chemical manufacturing facilities and equipment, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: Equipment in number.

Related Controls: The controls in this entry do not apply to equipment that is: (a) specially designed for use in civil applications (e.g., food processing, pulp and paper processing, or water purification); AND (b) inappropriate, by the nature of its design, for use in storing, processing, producing or conducting and controlling the flow of chemical weapons precursors controlled by 1C350.

Related Definitions: For purposes of this entry the term "chemical warfare agents" are those agents subject to the export licensing authority of the U.S. Department of State, Office of Defense Trade Controls. (See 22 CFR part 121)

Items:

- a. Reaction vessels or reactors, with or without agitators, with total internal (geometric) volume greater than 0.1 m³ (100 liters) and less than 20 m³ (20,000 liters), where all surfaces that come in direct contact with the chemical(s) being processed or contained are made from any of the following materials:
 - a.1. Alloys with more than 25% nickel and 20% chromium by weight;
 - a.2. Fluoropolymers;
 - a.3. Glass (including vitrified or enamelled coating or glass lining);
 - a.4. Nickel or alloys with more than 40% nickel by weight;
 - a.5. Tantalum or tantalum alloys;
 - a.6. Titanium or titanium alloys; or
 - a.7. Zirconium or zirconium alloys;
- b. Agitators for use in reaction vessels or reactors where all surfaces of the agitator that come in direct contact with the chemical(s) being processed or contained are made from any of the following materials:

b.1. Alloys with more than 25% nickel and 20% chromium by weight;
 b.2. Fluoropolymers;
 b.3. Glass (including vitrified or enamelled coatings or glass lining);
 b.4. Nickel or alloys with more than 40% nickel by weight;
 b.5. Tantalum or tantalum alloys;
 b.6. Titanium or titanium alloys; or
 b.7. Zirconium or zirconium alloys;
 c. Storage tanks, containers or receivers with a total internal (geometric) volume greater than 0.1 m³ (100 liters) where all surfaces that come in direct contact with the chemical(s) being processed or contained are made from any of the following materials:

c.1. Alloys with more than 25% nickel and 20% chromium by weight;
 c.2. Fluoropolymers;
 c.3. Glass (including vitrified or enamelled coatings or glass lining);
 c.4. Nickel or alloys with more than 40% nickel by weight;
 c.5. Tantalum or tantalum alloys;
 c.6. Titanium or titanium alloys; or
 c.7. Zirconium or zirconium alloys;
 d. Heat exchangers or condensers with a heat transfer surface area of less than 20 m², where all surfaces that come in direct contact with the chemical(s) being processed are made from any of the following materials:

d.1. Alloys with more than 25% nickel and 20% chromium by weight;
 d.2. Fluoropolymers;
 d.3. Glass (including vitrified or enamelled coatings or glass lining);
 d.4. Graphite;
 d.5. Nickel or alloys with more than 40% nickel by weight;
 d.6. Silicon carbide;
 d.7. Tantalum or tantalum alloys;
 d.8. Titanium or titanium alloys;
 d.9. Titanium carbide; or
 d.10. Zirconium or zirconium alloys

e. Distillation or absorption columns of internal diameter greater than 0.1 m, where all surfaces that come in direct contact with the chemical(s) being processed are made from any of the following materials:

e.1. Alloys with more than 25% nickel and 20% chromium by weight;
 e.2. Fluoropolymers;
 e.3. Glass (including vitrified or enamelled coatings or glass lining);
 e.4. Graphite;
 e.5. Nickel or alloys with more than 40% nickel by weight;
 e.6. Tantalum or tantalum alloys;
 e.7. Titanium or titanium alloys; or
 e.8. Zirconium or zirconium alloys;
 f. Remotely operated filling

equipment in which all surfaces that come in direct contact with the chemical(s) being processed are made from any of the following materials:

f.1. Alloys with more than 25% nickel and 20% chromium by weight; or

f.2. Nickel or alloys with more than 40% nickel by weight;

g. Multiple seal valves incorporating a leak detection port, bellows-seal valves, non-return (check) valves or diaphragm valves, in which all surfaces that come into direct contact with the chemical(s) being processed or contained are made from any of the following materials:

g.1. Alloys with more than 25% nickel and 20% chromium by weight;
 g.2. Fluoropolymers;
 g.3. Glass (including vitrified or enamelled coatings or glass lining);
 g.4. Nickel or alloys with more than 40% nickel by weight;

g.5. Tantalum or tantalum alloys;
 g.6. Titanium or titanium alloys; or
 g.7. Zirconium or zirconium alloys;
 h. Multi-walled piping incorporating a leak detection port, in which all surfaces that come in direct contact with the chemical(s) being processed or contained are made from any of the following materials:

h.1. Alloys with more than 25% nickel and 20% chromium by weight;
 h.2. Fluoropolymers;
 h.3. Glass (including vitrified or enamelled coatings or glass lining);
 h.4. Graphite;
 h.5. Nickel or alloys with more than 40% nickel by weight;
 h.6. Tantalum or tantalum alloys;
 h.7. Titanium or titanium alloys; or
 h.8. Zirconium or zirconium alloys;
 i. Multiple-seal, canned drive, magnetic drive, bellows or diaphragm pumps, with manufacturer's specified maximum flow-rate greater than 0.6 m³/hour, or vacuum pumps with manufacturer's specified maximum flow-rate greater than 5 m³/hour (under standard temperature (273 K (0° C)) and pressure (101.3 kPa) conditions), in which all surfaces that come into direct contact with the chemical(s) being processed are made from any of the of the following materials:

i.1. Alloys with more than 25% nickel and 20% chromium by weight;

i.2. Ceramics;
 i.3. Ferrosilicon;
 i.4. Fluoropolymers;
 i.5. Glass (including vitrified or enamelled coatings or glass lining);
 i.6. Graphite;
 i.7. Nickel or alloys with more than 40% nickel by weight;

i.8. Tantalum or tantalum alloys;
 i.9. Titanium or titanium alloys, or
 i.10. Zirconium or zirconium alloys;
 j. Incinerators designed to destroy chemical warfare agents, or chemical weapons precursors controlled by 1C350, having specially designed waste supply systems, special handling facilities and an average combustion chamber temperature greater than 1000°

C in which all surfaces in the waste supply system that come into direct contact with the waste products are made from or lined with any of the following materials:

j.1. Alloys with more than 25% nickel and 20% chromium by weight;
 j.2. Ceramics; or
 j.3. Nickel or alloys with more than 40% nickel by weight.

2B351 Toxic gas monitoring systems that operate on-line and dedicated detectors therefor.

* * * * *

List of Items Controlled

Unit: Equipment in number.

Related Controls: N/A.

Related Definitions: For the purposes of this entry, the term "continuous operation" describes the capability of the equipment to operate on line without human intervention. The intent of this entry is to control toxic gas monitoring systems capable of collection and detection of samples in environments such as chemical plants, rather than those used for batch-mode operation in laboratories.

Items:

a. Designed for continuous operation and usable for the detection of chemical warfare agents or chemicals controlled by 1C350 at concentrations of less than 0.3mg/m³ (see technical note below); or
 b. Designed for the detection of cholinesterase-inhibiting activity.

Technical Note: Toxic Gas Monitoring Systems, controlled under 2B351.a., include those with detection capability for chemicals containing phosphorus, sulfur, fluorine or chlorine, other than those specified in 1C350.

2B352 Equipment capable of use in handling biological materials, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: Equipment in number.

Related Controls: N/A.

Related Definitions: For purposes of this entry, isolators include flexible isolators, dry boxes, anaerobic chambers and glove boxes.

Items:

a. Complete containment facilities at P3 or P4 containment level;

Technical Note: P3 or P4 (BL3, BL4, L3, L4) containment levels are as specified in the WHO Laboratory Biosafety Manual (Geneva, 1983).

b. Fermenters capable of cultivation of pathogenic microorganisms, viruses, or for toxin production, without the propagation of aerosols, having a capacity equal to or greater than 100 liters.

Technical Note: Fermenters include bioreactors, chemostats, and continuous-flow systems.

c. Centrifugal separators capable of the continuous separation of pathogenic microorganisms, without the propagation of aerosols, and having all of the following characteristics:

c.1. A flow rate greater than 100 liters per hour;

c.2. Components of polished stainless steel or titanium;

c.3. Double or multiple sealing joints within the steam containment area; and

c.4. Capable of *in situ* steam sterilization in a closed state.

Technical Note: Centrifugal separators include decanters.

d. Cross (tangential) flow filtration equipment capable of continuous separation of pathogenic microorganisms, viruses, toxins, and cell cultures without the propagation of aerosols, having all of the following characteristics:

d.1. Equal to or greater than 5 square meters;

d.2. Capable of *in situ* sterilization.

e. Steam sterilizable freeze-drying equipment with a condenser capacity greater than 50 kgs of ice in 24 hours but less than 1,000 kgs;

f. Equipment that incorporates or is contained in P3 or P4 containment housing, as follows:

f.1. Independently ventilated protective full or half suits;

f.2. Class III biological safety cabinets or isolators with similar performance standards;

g. Chambers designed for aerosol challenge testing with microorganisms, viruses, or toxins and having a capacity of 1 m³ or greater.

Dated: September 22, 2000.

R. Roger Majak,

Assistant Secretary for Export Administration.

[FR Doc. 00-25068 Filed 10-2-00; 8:45 am]

BILLING CODE 3510-33-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket Nos. 91N-0101, 91N-0098, 91N-0103, and 91N-100H]

RIN 0910-AA19

Food Labeling: Health Claims and Labeling Statements; Dietary Fiber and Cancer; Antioxidant Vitamins and Cancer; Omega-3 Fatty Acids and Coronary Heart Disease; Folate and Neural Tube Defects; Revocation

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is revoking its regulations codifying the agency's decision not to authorize the use of health claims for four substance-disease relationships in the labeling of foods, including dietary supplements: Dietary fiber and cancer, antioxidant vitamins and cancer, omega-3 fatty acids and coronary heart disease, and the claim that 0.8 milligram (mg) of folate in dietary supplement form is more effective in reducing the risk of neural tube defects than a lower amount in conventional food. This action is being taken in response to a decision of the U.S. Court of Appeals for the D.C. Circuit invalidating these regulations and directing FDA to reconsider whether to authorize the four health claims. This action will result in the removal of the regulations but does not constitute FDA authorization of the four claims. FDA is completing its reconsideration of the claims and expects to issue decisions on all four claims by October 10, 2000.

DATES: This rule is effective October 3, 2000.

FOR FURTHER INFORMATION CONTACT: James E. Hoadley, Center for Food Safety and Applied Nutrition (HFS-832), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-205-5429.

SUPPLEMENTARY INFORMATION:

I. Background

In the *Federal Register* of January 6, 1993, FDA issued final rules announcing its decision not to authorize the use of health claims for four substance-disease relationships in the labeling of conventional foods. (See 58 FR 2537 (dietary fiber and cancer); 58 FR 2622 (antioxidant vitamins and cancer); 58 FR 2682 (omega-3 fatty acids

and coronary heart disease); and 58 FR 2606 (folic acid¹ and neural tube defects²)). Soon after, FDA proposed in the *Federal Register* of October 14, 1993 (58 FR 53296), not to authorize use of three of the four claims in the labeling of dietary supplements. In October 1993, after further review of evidence on the relationship between folate and reduced risk of neural tube defects, FDA proposed to authorize a health claim for this relationship (58 FR 53254, October 14, 1993); however, the agency proposed not to allow such claims to include a statement that folate from one source is more effective in reducing the risk of neural tube defects than folate from another source. Both proposals became final by operation of law on December 31, 1993. (See 59 FR 395, January 4, 1994 (dietary fiber and cancer, antioxidant vitamins and cancer, and omega-3 fatty acids and coronary heart disease); 59 FR 433, January 4, 1994 (folate and neural tube defects).) FDA's decisions not to authorize these four claims are codified in § 101.71(a) (21 CFR 101.71(a)) (dietary fiber and cancer); § 101.71(c) (antioxidant vitamins and cancer); § 101.71(e) (omega-3 fatty acids and coronary heart disease); and § 101.79(c)(2)(i)(G) (21 CFR 101.79(c)(2)(i)(G)) (claims comparing effectiveness of folate from different sources).

Several dietary supplement marketers and nonprofit organizations that had submitted comments during FDA's health claims rulemakings filed suit in Federal district court on constitutional and statutory grounds seeking, among other things, authorization to make the following health claims for use in the labeling of dietary supplements: "Consumption of fiber may reduce the risk of colorectal cancer," "Consumption of antioxidant vitamins may reduce the risk of certain kinds of cancer," "Consumption of omega-3 fatty acids may reduce the risk of coronary heart disease," and "0.8 mg of folic acid in a dietary supplement is more effective in reducing the risk of neural tube defects than a lower amount in foods in common form." The district court ruled for FDA in all respects

¹ In its original health claim evaluation, FDA used the term "folic acid" to describe this B vitamin. Later, the agency decided that the broader term "folate" was more scientifically accurate because that term encompasses both synthetic and naturally occurring forms of the vitamin, whereas folic acid refers only to the synthetic form (see 58 FR 53254 at 53257 through 53258 and 53280, October 14, 1993). Accordingly, this rule uses the term "folate." The two terms may be used interchangeably in food labeling.

² Neural tube defects are birth defects of the brain or spinal cord. Spina bifida and anencephaly are the most common types of neural tube defects.

(*Pearson v. Shalala*, 14 F. Supp. 2d 10 (D.D.C. 1998)); however, the U.S. Court of Appeals for the D.C. Circuit reversed the district court's decision. The court of appeals held the regulations codifying FDA's decision not to authorize the four health claims invalid and instructed FDA to reconsider the four health claims (*Pearson v. Shalala*, 164 F.3d 650 (D.C. Cir. 1999)).

In the Nutrition Labeling and Education Act of 1990, Congress made health claims for dietary supplements subject to a procedure and standard to be established by FDA (see section 403(r)(5)(D) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 343(r)(5)(D)). FDA adopted the same procedure for health claims in dietary supplement labeling that Congress had prescribed for health claims in the labeling of conventional foods (see section 403(r)(3) and (r)(4) of the act). This procedure requires the evidence supporting a health claim to be presented to FDA for review before the claim may appear in labeling. Unless and until FDA adopts a regulation authorizing the claim, a dietary supplement bearing the claim is subject to regulatory action as a misbranded food (see section 403(r)(1)(B) of the act, a misbranded drug (see section 502(f)(1) of the act (21 U.S.C. 352(f)(1)), and as an unapproved new drug (see section 505(a) of the act (21 U.S.C. 355(a)).

Recently, the U.S. District Court for the District of Columbia denied the *Pearson* plaintiffs' motion for a preliminary injunction granting them immediate permission to make the four health claims that FDA is reconsidering. In their motion, the plaintiffs argued that because the court of appeals had invalidated the regulations codifying FDA's decision not to authorize the four claims, the claims should be permitted in dietary supplement labeling if accompanied by disclaimers suggested by the court of appeals. The district court rejected this argument. The court's decision said in part that a preliminary injunction was not in order because the plaintiffs may not bypass FDA's pre-clearance process for health claims. "Plaintiffs' fatal assumption is that the Court of Appeals' invalidation of the regulations allows them to now make their health claims with disclaimers, without any further pre-clearance by FDA. It does not. Invalidation of the regulations merely puts plaintiffs back at square one, which means they must again go through the pre-clearance process * * *." (*Pearson v. Shalala*, No. Civ. A. 95-1865, 2000 WL 767584, at *2 (D.D.C. May 24, 2000)).

Thus, while FDA is revoking the regulations codifying its original

decision not to authorize the four health claims that were challenged in *Pearson*, such claims still may not be used in labeling pending reconsideration of these claims by FDA. FDA expects to complete its reconsideration of the four claims and issue a decision on each claim by October 10, 2000.

II. Effective Date

The Administrative Procedure Act and FDA regulations provide that an agency may dispense with notice-and-comment rulemaking procedures when the agency for good cause finds that such procedures are impracticable, unnecessary, or contrary to the public interest (5 U.S.C. 553(b)(3)(B); § 10.40(e)(1) (21 CFR 10.40(e)(1))). Because this final rule is being issued in response to a court order, FDA finds that notice and comment are unnecessary. In addition, the Commissioner of Food and Drugs finds good cause under 5 U.S.C. 553(d)(3) and § 10.40(c)(4)(ii) to make this final rule effective upon publication.

List of Subjects in 21 CFR Part 101

Food labeling, Nutrition, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 101 is amended as follows:

PART 101—FOOD LABELING

1. The authority citation for 21 CFR part 101 continues to read as follows:

Authority: 15 U.S.C. 1453, 1454, 1455; 21 U.S.C. 321, 331, 342, 343, 348, 371.

§ 101.71 [Amended]

2. Section 101.71 *Health claims: claims not authorized* is amended by removing paragraphs (a), (c), and (e); and by redesignating paragraph (b) as paragraph (a), and paragraph (d) as paragraph (b).

§ 101.79 [Amended]

3. Section 101.79 *Health claims: Folate and neural tube defects* is amended by removing paragraph (c)(2)(i)(G), and by redesignating paragraph (c)(2)(i)(H) as (c)(2)(i)(G).

Dated: September 25, 2000.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 00-25352 Filed 10-2-00; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 36

Contracts Under the Indian Self-Determination Act; Removal of Regulations

AGENCY: Indian Health Service, HHS.

ACTION: Final rule.

SUMMARY: The Indian Health Service (IHS) is eliminating regulations on contracts under the Indian Self-Determination Act as mandated by Executive Order 12866 to streamline the regulatory process and enhance the planning and coordination of new and existing regulations.

EFFECTIVE DATE: October 3, 2000.

FOR FURTHER INFORMATION CONTACT:

Leslie M. Morris, Director, Division of Regulatory and Legal Affairs, Indian Health Service, Suite 450, 12300 Twinbrook Parkway, Rockville, MD 20852; telephone (301) 443-1116. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On June 24, 1996, The Department of Health and Human Services (HHS) and the Department of the Interior (DOI) issued joint regulations authorized by section 107 of the Indian Self-Determination and Education Assistance Act (ISDA), Public Law 93-638, as amended, 25 U.S.C. 450k. These joint regulations, published in the **Federal Register** on June 24, 1996, and codified at 25 CFR part 900, replaced Department regulations codified at 42 CFR part 36, subpart I, "Contracts under the ISDA"; 48 CFR section 352.280-4, "Contracts awarded under the ISDA"; 48 CFR section 352.380-4, "Contracts awarded under the ISDA"; and 48 CFR subpart 380.4, "Contracts awarded under the ISDA"; because they are no longer necessary for the Administration of the IHS Program.

Section 107(b) of the ISDA provides in pertinent part that "the secretary is authorized to repeal any regulation inconsistent with the provisions of this act." The HHS has proposed at 64 FR 1344 to revise 48 CFR, Chapter 3, to streamline and simplify its acquisition regulations (HHSRA) in accordance with the directions of the National Performance Review. In so doing, the sections of 48 CFR eliminated by the joint rule (25 CFR part 900) issued by the HHS and the DOI would be removed. Therefore, the IHS proposed at 65 FR 4797 the elimination of only Subpart I of 42 CFR part 36. No comments were received in response to the proposed rule. The proposed rule is converted to a final rule without change.

Executive Order 12866

This rule is not a significant regulatory action under Executive Order 12866 and has not been reviewed by the Office of Management and Budget. It removes obsolete regulations.

Regulatory Flexibility Act

The HHS certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act since it only removes obsolete regulations.

Executive Order 12612

The Department has determined that this rule does not have significant Federalism effects because it pertains solely to Federal-Tribal relations and will not interfere with the roles, rights, and responsibilities of States.

Paperwork Reduction Act of 1995

This regulation contains no information collection requirement that would require notification of the Office of Management and Budget.

The authority to eliminate these regulations is 42 U.S.C. 2003 and 25 U.S.C. 13.

List of Subjects in 42 CFR Part 36

American Indians, Alaska Natives, Government health care, Indians—business and finance, property.

Dated: September 12, 2000.

Michel E. Lincoln,

Deputy Director, Indian Health Service.

Approved: September 26, 2000.

Donna E. Shalala,

Secretary of Health and Human Services.

For the reasons set out in the preamble, and under the authority of 42 U.S.C. 2003 and 25 U.S.C. 13, subpart I of 42 CFR part 36 is removed and reserved.

[FR Doc. 00-25292 Filed 10-2-00; 8:45 am]

BILLING CODE 4160-16-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Health Care Financing Administration****42 CFR Parts 413, 489, and 498**

[HCFA-1005-CN4]

RIN 0938-AI56

Medicare Program; Prospective Payment System for Hospital Outpatient Services: Provider-Based Criteria; Delay of Effective Date and Correction

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of delay of effective date and correction.

SUMMARY: In the April 7, 2000 **Federal Register** (65 FR 18434), we published a final rule with comment period entitled, "Prospective Payment System for Hospital Outpatient Services." New §§ 413.24(d)(6) and 413.65 and revisions to §§ 489.24, 498.2, and 498.3 established requirements for facilities or organizations seeking provider-based status. This document delays the effective date of these provider-based regulations from October 10, 2000 to January 10, 2001, applicable for provider cost reporting periods beginning on or after January 10, 2001. In this document, we are also making a conforming change in the regulations text at § 413.65(i) concerning enforcement.

DATES: *Effective date:* The effective date of new §§ 413.24(d)(6) and 413.65 and revised §§ 489.24, 498.2, and 498.3 is delayed until January 10, 2001.

Applicability date: New §§ 413.24(d)(6) and 413.65 and revised §§ 489.24, 498.2, and 498.3 are applicable for provider cost reporting periods beginning on or after January 10, 2001.

FOR FURTHER INFORMATION CONTACT: George Morey, (410) 786-4653.

SUPPLEMENTARY INFORMATION:**I. Background**

On April 7, 2000, we published in the **Federal Register** (65 FR 18434), a final rule with comment period entitled "Prospective Payment System for Hospital Outpatient Services." Among the regulatory provisions included were new §§ 413.24(d)(6) and 413.65 and revisions to §§ 489.24, 498.2, and 498.3. These regulations established requirements for facilities or organizations that seek provider-based status (departments, provider-based entities, satellite facilities, and remote locations of hospitals). The effective

date of the provider-based regulations, as stated in the April 2000 rule, is October 10, 2000.

New § 413.65(i) states that we will recover any overpayments resulting from inappropriate treatment of a facility or organization as provided-based. However, this provision states that no recovery will be made for any period prior to October 10, 2000, if the management of the facility or organization made a "good faith" effort to operate it as provided-based (as described in § 413.65(i)(3)). The reference to October 10, 2000 was included to limit the "good faith" exception to periods before the effective date of the new requirements.

II. Provisions of This Notice

Based on the following concerns, we have decided to delay the effective date of the provider-based portions of the April 2000 final rule until January 10, 2001, applicable for provider cost reporting periods beginning on or after January 10, 2001. For example, a provider whose cost reporting periods begins on April 1 will not be affected by these provider-based regulations until its cost reporting period beginning on April 1, 2001.

To provide for smooth implementation of the provider-based regulations, we must clarify a number of administrative, procedural, and technical issues and provide our regional offices, which are charged with responsibility for making provider-based determinations, and hospitals with further training and guidance. We have completed a variety of training and informational activities, developed responses to "Frequently Asked Questions," and held numerous meetings with individual providers and provider associations in order to communicate our policies and plans for implementing the new regulations. In the course of these activities, the need for additional guidance interpreting the regulations and addressing procedural and administrative concerns has become apparent. Given the time needed to complete and disseminate this material, we have concluded that implementation of the new provider-based regulations on October 10, 2000 would be imprudent.

A delay in the effective date of the provider-based regulations will allow for dissemination of the additional material described above, and will give hospitals and other providers additional time to fully assess the potential impact of both the new hospital outpatient prospective payment system and the new provider-based regulations on their facilities and organizations. A delay in

the effective date will also allow the industry more time to prepare to comply with the new regulations, and that in turn will help reduce the number of errors or other problems that might occur as a result of transition to the new rules. The phase-in of implementation over 12-months, rather than a single date, will allow for a more manageable distribution of work for the regional offices, fiscal intermediaries, and hospitals. (As noted earlier, implementation by cost reporting periods means that a provider with a cost reporting period starting after January 10, 2001, would not be affected by the new regulations until the start of its next cost reporting period. Thus, a provider with an April 1 cost period would not be affected until April 1, 2001, a provider with a July 1 cost period would not be affected until July 1, 2001, and so on.) We expect to issue further clarification of administrative, procedural, and technical issues as soon as possible.

To provide for uniform and consistent application of the "good faith" exception to periods before the revised date, we are revising § 413.65(i)(2) to state that the exception will be available only for main provider cost reporting periods beginning on or after January 10, 2001 or, in the case of a facility or organization paid as a provider-based entity, for that entity's cost reporting periods beginning on or after January 10, 2001.

In October 2000, we plan to host a town hall meeting to discuss specific aspects of the provider-based regulations at our headquarters in Baltimore, Maryland. The subjects of this meeting will be the ways in which a facility or organization can demonstrate that it serves the same patient population as the main provider (§ 413.65(d)(7)(i)), and the applicability of provisions on management contracts (§ 413.65(f)) to certain on-campus hospital departments. We will make further details regarding the town hall meeting available on our website, www.hcfa.gov.

III. Impact Statement

In the April 2000 final rule, we discussed the impact of the provider-based regulations on providers and beneficiaries. Because we are delaying the implementation of the final rule, the current provider-based criteria, as stated in HCFA program manuals, will remain in effect for an additional period of time. We believe that any impact on small entities would be positive because the delay in effective date will allow more time for them to come into compliance with the new regulations,

and also permit the new regulations to be implemented in a more clear and consistent manner.

Correction of Errors

In FR Doc. 00-8215 of April 7, 2000 (65 FR 18434), make the following correction:

Regulations Text

§ 413.65 [Corrected]

On page 18540, in column 3, § 413.65 (i)(2) is corrected to read as follows:

§ 413.65 Requirements for a determination that a facility or an organization has provider-based status.

* * * * *

(i) * * *

(2) *Recovery of overpayments.* If HCFA finds that payments for services at the facility or organization have been made as if the facility or organization were provider-based, even though HCFA had not previously determined that the facility or organization qualified for provider-based status, HCFA will recover the difference between the amount of payments that actually were made and the amount of payments that HCFA estimates should have been made in the absence of a determination of provider-based status. Recovery will not be made for any main provider cost reporting periods beginning before January 10, 2001 or, in the case of a facility organization paid as a provider-based entity, for that entity's cost reporting periods beginning before January 10, 2001 if, during all of those periods, the management of the facility or organization made a good faith effort to operate it as a provider-based facility or organization, as described in paragraph (h)(3) of this section.

* * * * *

(Authority: Section 1888(t) of the Social Security Act (42 U.S.C. 1395yy(t))

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: September 19, 2000.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

Dated: September 22, 2000.

Donna E. Shalala,

Secretary.

[FR Doc. 00-25373 Filed 9-29-00; 12:41 pm]

BILLING CODE 4120-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00-2207, MM Docket No. 00-103; RM-9878]

Digital Television Broadcast Services; Killeen, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of White Knight Broadcasting of Killeen License Corporation, licensee of TV station KAKW(TV), substitutes DTV Channel 13 for DTV Channel 23 at Killeen, Texas. See 65 FR 37752, June 16, 2000. DTV Channel 13 can be allotted to Killeen at coordinates (30-43-33 N. and 97-59-24 W.) with a power of 39.4, HAAT of 553 meters, and with a DTV service population of 1307 thousand.

With this action, this proceeding is terminated.

DATES: Effective November 16, 2000.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418-1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 00-103, adopted September 29, 2000, and released October 2, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857-3800, 1231 20th Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Television, Digital television broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Texas, is amended by removing DTV Channel 23 and adding DTV Channel 13 at Killeen.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 00-25358 Filed 10-2-00; 8:45 am]

BILLING CODE 6712-01-U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00-2206, MM Docket No. 00-98; RM-9811]

Digital Television Broadcast Services; Thomasville, GA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of WCTV Licensee Corporation, licensee of TV Station WCTV-TV, substitutes DTV Channel 46 for DTV Channel 52 at Thomasville, Georgia. See 65FR 36808, June 12, 2000. DTV Channel 46 can be allotted to Thomasville at coordinates (30-40-13 N. and 83-56-26 W.) with a power of 1000, HAAT of 619 meters, and with a DTV service population of 832 thousand.

With this action, this proceeding is terminated.

DATES: Effective November 16, 2000.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418-1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 00-98, adopted September 29, 2000, and released October 2, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, S.W., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857-3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Television, Digital television broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

47 CFR PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Georgia, is amended by removing DTV Channel 52 and adding DTV Channel 46 at Thomasville.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 00-25360 Filed 10-2-00; 8:45 am]

BILLING CODE 6712-01-U

ENVIRONMENTAL PROTECTION AGENCY

48 CFR Parts 1511, 1515, 1517, 1519, 1523, 1528, 1535, 1542, 1545 and 1552

[FRL-6878-9]

Acquisition Regulation; Administrative Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim rule with request for comments.

SUMMARY: EPA is issuing this interim rule amending the EPA Acquisition Regulation (EPAAR) to add clauses to the EPAAR which have been repeatedly used in EPA procurements but which have not formally been incorporated into the EPAAR, make other administrative changes, and remove from the EPAAR unnecessary coverage that duplicates existing Federal Acquisition Regulation (FAR) coverage.

DATES: Effective Date: October 3, 2000.

Comment Date: Interested parties should submit written comments to the address shown below on or before December 4, 2000 to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to: U.S. Environmental Protection Agency, Office of Acquisition Management, 1200 Pennsylvania Avenue, NW., Attention: Paul Schaffer, Mail Code (3802R), Washington, DC 20460. Comments and data may also be submitted electronically by sending electronic mail (E-mail) to: Schaffer.Paul@epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in Corel WordPerfect format or ASCII file format. No confidential business information (CBI) should be submitted through e-mail. Electronic comments on this rule may be filed on-line at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: Paul Schaffer, U.S. EPA, Office of Acquisition Management, Mail Code (3802R), 1200 Pennsylvania Avenue, NW, Washington, DC 20460, Telephone: (202) 564-4366.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule amends the EPA Acquisition Regulation (EPAAR) (48 CFR Chapter 15) to publish for public comment EPA contract clauses which have not previously undergone formal Agency rulemaking subject to public review and comment because of the necessity of complying with FAR policies and procedures on a timely basis. As a result of recent procurement reform and streamlining initiatives, EPA has undertaken an extensive review of its procurement regulations. As part of this effort, EPA identified a number of clauses it has regularly used in its solicitations and contracts which had not previously undergone formal Agency rulemaking subject to public review and comment and which had not been incorporated into the EPAAR. This rulemaking action is to incorporate these existing EPA clauses into the EPAAR. EPA does not anticipate any adverse comments because, as stated above, these clauses have been regularly used in EPA solicitations and contracts for some time now without any objections or questions raised by entities responding to EPA procurements and/or contracting with the Agency.

B. Executive Order 12866

This interim rule is not a significant regulatory action for the purposes of Executive Order 12866; therefore, no review is required by the Office of Information and Regulatory Affairs within the Office of Management and Budget (OMB).

C. Paperwork Reduction Act

The information collection requirement in 1552.245-73, Government Property, is covered by OMB clearance number 9000-0075. The Paperwork Reduction Act does not apply to any other clause herein because this interim rule does not contain any new information collection requirements that require the approval of OMB under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

D. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice

and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impact of today's rule on small entities, small entity is defined as: (1) A small business that meets the definition of a small business found in the Small Business Act and codified at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's interim rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the proposed rule on small entities." 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. This interim rule merely incorporates existing EPA solicitation and contract provisions into the EPAAR and will have no adverse impact on small entities. The requirements under this interim rule impose no additional reporting, record-keeping, or compliance costs on small entities.

E. Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess their regulatory actions on State, local, and Tribal governments, and the private sector. This interim rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in one year. Any private sector costs for this action relate to

paperwork requirements and associated expenditures that are far below the level established for UMRA applicability. Thus, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

F. Executive Order 13045

Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be economically significant as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because it does not involve decisions on environmental health or safety risks.

G. Executive Order 13132

Executive Order 13132 entitled, "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This interim rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This interim rule merely incorporates existing EPA solicitation and contract provisions into the EPAAR. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

H. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian Tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by Tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected Tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian Tribal government "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian Tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

I. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures phaphaand business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs

EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This rule does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rules report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 48 CFR Parts 1511, 1515, 1517, 1519, 1523, 1528, 1535, 1542, 1545, and 1552

Government procurement.

Authority: The provisions of this regulation are issued under 5 U.S.C. 301; Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c); and 41 U.S.C. 418b. 48 CFR Chapter 15 is amended as follows:

1. The authority citations for 48 CFR parts 1511, 1515, 1517, 1519, 1523, 1528, 1535, 1542, 1545, and for part 1552 continue to read as follows:

Authority: 5 U.S.C. 301; Sec. 205(c), 63 Stat. 390, as amended; 40 U.S.C. 486(c); and 41 U.S.C. 418b.

2. Section 1511.011–80 is added to read as follows:

1511.011–80 Data Standards for the transmission of laboratory measurement results.

The contracting officer shall insert the clause at 1552.211–80 in all solicitations and contracts when the contract requires the electronic transmission of environmental measurements from laboratories to the Environmental Protection Agency (EPA).

3. Section 1515.209 is amended by adding paragraph (c) to read as follows:

1515.209 Solicitation provisions and contract clauses.

* * * * *

(c) The contracting officer shall insert the clause at 1552.215–75, Past

Performance Information, or a clause substantially the same as 1552.215–75, in all competitively negotiated acquisitions with an estimated value in excess of \$100,000.

4. Section 1517.208 is amended by removing paragraph (a) and redesignating paragraphs (b) through (g) as (a) through (f) respectively and adding paragraph (g) to read as follows:

§ 1517.208 Solicitation provisions and contract clauses.

* * * * *

(g) The Contracting officer shall insert the clause at 1552.217–77, Option to Extend the Term of the Contract—Fixed Price, when applicable.

5. Subpart 1519.2 is amended by adding section 1519.203 to read as follows:

§ 1519.203 Mentor protegee.

(a) The Contracting officer shall insert the clause at 1552.219–70, Mentor-Protege Program, in all contracts under which the Contractor has been approved to participate in the EPA Mentor-Protege Program.

(b) The Contracting officer shall insert the provision at 1552.219–71, Procedures for Participation in the EPA Mentor-Protege Program, in all solicitations valued at \$500,000 or more which will be cost-plus-award-fee or cost-plus fixed-fee contracts.

6. Subpart 1519.2 is amended by adding section 1519.204 to read as follows:

§ 1519.204 Small disadvantaged business participation.

(a) The Contracting officer shall insert the provision at 1552.219–72, Small Disadvantaged Business Participation Program, or a provision substantially the same as 1552.219–72, in solicitations for acquisitions subject to FAR 19.12 that will evaluate the extent of the participation of Small Disadvantaged Business (SDB) concerns in the performance of a resulting contract.

(b) The Contracting officer shall insert the clause at 1552.219–73, Small Disadvantaged Business Targets, or one substantially the same as 1552.219–73, in solicitations and contracts for acquisitions subject to FAR 19.12 that evaluate the extent of participation of SDB concerns in the performance of the contract and which included solicitation provision 1552.219–72.

(c) The Contracting officer shall insert the evaluation provision at 1552.219–74, Small Disadvantaged Business Participation Evaluation Factor, (and assign a value to it), or one substantially the same as 1552.219–74, in solicitations for acquisitions subject to

FAR 19.12 that include the provision at 1552.219–72 and will evaluate the extent of participation of SDB concerns in the performance of the contract.

7. section 1523.303–72 is added to read as follows:

§ 1523.303–72 Care of Laboratory Animals.

Contracting officers shall insert the clause at 1552.223–72, Care of Laboratory Animals, in all contracts involving the use of experimental animals.

8. Section 1523.7003 is amended by designating the existing text as paragraph (b) and adding a new paragraph (a) to read as follows:

§ 1523.7003 Contract clause.

(a) Rehabilitation Act Notice.

Contracting officers shall insert the clause at 1552.239–70, Rehabilitation Act Notice, or one substantially the same as this clause, in all solicitations and contracts where the contractor may be required to provide any type of support to EPA in connection with EPA programs and activities, including conferences, symposia, workgroups, meetings, etc.

(b) * * *

9. Part 1528 is added to read as follows:

PART 1528—INSURANCE

Subpart 1528.1—Insurance

1528.101 Insurance Liability to Third Persons.

Contracting officers shall insert the clause at 1552.228–70, Insurance Liability to Third Persons, in cost-reimbursement solicitations and contracts, except those for construction and architect-engineer services. **Note:** This clause may be used in contracts awarded utilizing architect-engineer services such as requirements for Superfund cleanups (*e.g.*, response action contracts). The clause does not apply to Superfund indemnification for third party pollution liability or coverage for commercial pollution liability insurance as prescribed by section 119 of CERCLA as amended by SARA.

10. Section 1535.007–070 is amended by adding paragraph (g) to read as follows:

1535.007–070 Contract clauses.

* * * * *

(g) Contracting officers shall insert the clause at 1552.235–80, Access to Confidential Business Information (CBI), in all types of contracts when it is possible that it will be necessary for the contractor to have access to CBI during

the performance of tasks required under the contract.

11. Section 1542.705 is amended by designating the existing paragraph as (a) and adding paragraph (b) as follows:

1542.705 Final indirect cost rates.

(a) * * *

(b) Contracting officers shall insert the clause at 1552.242–72, Financial Administrative Contracting officers (FACO), in cost-reimbursement contracts when the Environmental Protection Agency (EPA) is the cognizant federal agency and a FACO will be assigned.

12. Section 1545.106 is amended by adding a new paragraph (d) to read as follows:

1545.106 Government property clauses.

* * * * *

(d) Contracting officers shall insert the clause at 1552.245–73, Government Property, in all cost-type solicitations and contracts regardless of whether Government Property is initially provided, and in all fixed-price solicitations and contracts whenever Government furnished property is provided.

* * * * *

13. Section 1552.208–70, Printing, is revised to read as follows:

1552.208–70 Printing.

As prescribed in 1508.870, insert the following clause:

Printing

October 2000

(a) Definitions.

“Printing” is the process of composition, plate making, presswork, binding and microform; or the end items produced by such processes and equipment. Printing services include newsletter production and periodicals which are prohibited under EPA contracts.

“Composition” applies to the setting of type by hot-metal casting, photo typesetting, or electronic character generating devices for the purpose of producing camera copy, negatives, a plate or image to be used in the production of printing or microform.

“Camera copy” (or “camera-ready copy”) is a final document suitable for printing/duplication.

“Desktop Publishing” is a method of composition using computers with the final output or generation of camera copy done by a color inkjet or color laser printer. This is not considered “printing.” However, if the output from desktop publishing is being sent to a typesetting device (*i.e.*, Linotronic) with camera copy being produced in either paper or negative format, these services are considered “printing.”

“Microform” is any product produced in a miniaturized image format, for mass or general distribution and as a substitute for conventionally printed material. Microform

services are classified as printing services and includes microfiche and microfilm. The contractor may make up to two sets of microform files for archival purposes at the end of the contract period of performance.

“Duplication” means the making of copies on photocopy machines employing electrostatic, thermal, or other processes without using an intermediary such as a negative or plate.

“Requirement” means an individual photocopying task. (There may be multiple requirements under a Work Assignment or Delivery Order. Each requirement would be subject to the photocopying limitation of 5,000 copies of one page or 25,000 copies of multiple pages in the aggregate per requirement).

(b) Prohibition.

The contractor shall not engage in, nor subcontract for, any printing in connection with the performance of work under this contract. Duplication of more than 5,000 copies of one page or more than 25,000 copies of multiple pages in the aggregate per requirement constitutes printing. The intent of the limitation is not to allow the duplication of final documents for use by the Agency. In compliance with EPA Order 2200.4a, EPA Publication Review Procedure, the Office of Communications, Education, and Media Relations is responsible for the review of materials generated under a contract published or issued by the Agency under a contract intended for release to the public.

(c) Affirmative Requirements.

(1) Unless otherwise directed by the contracting officer, the contractor shall use double-sided copying to produce any progress report, draft report or final report.

(2) Unless otherwise directed by the contracting officer, the contractor shall use recycled paper for reports delivered to the Agency which meet the minimum content standards for paper and paper products as set forth in EPA’s Web site for the Comprehensive Procurement Guidelines at: <http://www.epa.gov/cpg/>.

(d) Permitted Contractor Activities.

(1) The prohibitions contained in paragraph (b) do not preclude writing, editing, or preparing manuscript copy, or preparing related illustrative material to a final document (camera-ready copy) using desktop publishing.

(2) The contractor may perform a requirement involving the duplication of less than 5,000 copies of only one page, or less than 25,000 copies of multiple pages in the aggregate, using one color (black), so long as such pages do not exceed the maximum image size of 10¾ by 14¾ inches, or 11 by 17 paper stock. Duplication services below these thresholds are not considered printing. If performance of the contract will require duplication in excess of these limits, contractors must immediately notify the contracting officer in writing. EPA may then seek a waiver from the Joint Committee on Printing, U. S. Congress. The intent of the limitation is to allow “incidental” duplication (drafts, proofs) under a contract. The intent of the limitation is not to allow the duplication of copies of final documents for use by the Agency or as distributed as instructed by the Agency.

(3) The contractor may perform a requirement involving the multi-color duplication of no more than 100 pages in the aggregate using color copier technology, so long as such pages do not exceed the maximum image size of 10¾ by 14¾ inches, or 11 by 17 paper stock. Duplication services below these thresholds are not considered printing. If performance of the contract will require duplication in excess of these limits, contractors must immediately notify the contracting officer in writing. EPA may then seek a waiver from the Joint Committee on Printing, U. S. Congress.

(4) The contractor may perform the duplication of no more than a total of 100 diskettes or CD-ROM’s. Duplication services below these thresholds are not considered printing. If performance of the contract will require duplication in excess of these limits, contractors must immediately notify the contracting officer in writing. EPA may then seek a waiver from the Joint Committee on Printing, U. S. Congress.

(e) Violations.

The contractor may not engage in, nor subcontract for, any printing in connection with the performance of work under the contract. The cost of any printing services in violation of this clause will be disallowed, or not accepted by the Government.

(f) Flowdown Provision.

The contractor shall include in each subcontract which may involve a requirement for any printing/duplicating/copying a provision substantially the same as this clause.

(End of clause)

14. In Section 1552.211–70, in the clause “Reports of Work” and in alternate I revise the OMB clearance expiration date of “January 31, 2000” to read “February 28, 2003.”

15. Section 1552.211–79, is amended by removing paragraph (a)(5), revising the last sentence in paragraph (b)(3), and revising paragraph (d) to read as follows:

1552.211–79 Compliance with EPA policies for information resources management.

* * * * *

(b)(3) * * * (This document may be found at: <http://www.epa.gov/docs/etsdop/>.)

(c) * * *

(d) Electronic access. A complete listing, including full text, of documents included in the 2100 Series of the Agency’s Directive System is maintained on the EPA Public Access Server on the Internet at <http://epa.gov/docs/irmpoli8/>.

(End of clause)

16. Section 1552.211–80, Data Standards for the Transmission of Laboratory Measurement Results, is added to read as follows:

1552.211-80 Data standards for the transmission of laboratory measurement results.

As prescribed in 1511.011-80, insert the following clause:

Data Standards for the Transmission of Laboratory Measurement Results

October 2000

This contract requires the transmission of environmental measurements to EPA. The transmission of environmental measurements shall be in accordance with the provisions of EPA Order 2180.2, dated December 10, 1987, which is incorporated by reference in this contract. Copies of the Order may be obtained by written request to: Office of Information Resources Management, Information Management and Systems Division, Mail Code (3404), Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20460.

(End of clause)

17. Section 1552.215-75, Past Performance Information, is added to read as follows:

1552.215-75 Past Performance Information.

As prescribed in 1515.209(c), insert the following clause:

Past Performance Information

October 2000

(a) Offerors shall submit the information requested below as part of their proposal for both the offeror and any proposed subcontractors for subcontracts expected to exceed \$ * . The information may be submitted prior to other parts of the proposal in order to assist the Government in reducing the evaluation period.

(b) Offerors shall submit a list of all or at least * contracts and subcontracts completed in the last * years, and all contracts and subcontracts currently in process, which are similar in nature to this requirement.

(1) The contracts and subcontracts listed may include those entered into with Federal, State and local governments, and commercial businesses, which are of similar scope, magnitude, relevance, and complexity to the requirement which is described in the RFP. Include the following information for each contract and subcontract listed:

- (a) Name of contracting activity.
- (b) Contract number.
- (c) Contract title.
- (d) Contract type.
- (e) Brief description of contract or subcontract and relevance to this requirement.
- (f) Total contract value.
- (g) Period of performance.
- (h) Contracting officer, telephone number, and E-mail address (if available).
- (i) Program manager/project officer, telephone number, and E-mail address (if available).
- (j) Administrative Contracting officer, if different from (h) above, telephone number, and E-mail address (if available).
- (k) List of subcontractors (if applicable).

(l) Compliance with subcontracting plan goals for small disadvantaged business concerns, monetary targets for small disadvantaged business participation, and the notifications submitted under FAR 19.1202-4 (b), if applicable.

(c) Offerors should not provide general information on their performance on the identified contracts and subcontracts. General performance information will be obtained from the references.

(1) Offerors may provide information on problems encountered and corrective actions taken on the identified contracts and subcontracts.

(2) References that may be contacted by the Government include the contracting officer, program manager/project officer, or the administrative contracting officer identified above.

(3) If no response is received from a reference, the Government will make an attempt to contact another reference identified by the offeror, to contact a reference not identified by the offeror, or to complete the evaluation with those references who responded. The Government shall consider the information provided by the references, and may also consider information obtained from other sources, when evaluating an offeror's past performance.

(4) Attempts to obtain responses from references will generally not go beyond two telephonic messages and/or written requests from the Government, unless otherwise stated in the solicitation. The Government is not obligated to contact all of the references identified by the offeror.

(d) If negative feedback is received from an offeror's reference, the Government will compare the negative response to the responses from the offeror's other references to note differences. A score will be assigned appropriately to the offeror based on the information. The offeror will be given the opportunity to address adverse past performance information obtained from references on which the offeror has not had a previous opportunity to comment, if that information makes a difference in the Government's decision to include the offeror in or exclude the offeror from the competitive range. Any past performance deficiency or significant weakness will be discussed with offerors in the competitive range during discussions.

(e) Offerors must send Client Authorization Letters (see Section J of the solicitation) to each reference listed in their proposal to assist in the timely processing of the past performance evaluation. Offerors are encouraged to consolidate requests whenever possible (i.e., if the same reference has several contracts, send that reference a single notice citing all applicable contracts). Offerors may send Client Authorization Letters electronically to references with copies forwarded to the contracting officer.

(1) If an offeror has no relevant past performance history, an offeror must affirmatively state that it possesses no relevant past performance history.

(2) Client Authorization Letters should be mailed or E-mailed to individual references no later than five (5) working days after

proposal submission. The offeror should forward a copy of the Client Authorization Letter to the contracting officer simultaneously with mailing to references.

(f) Each offeror may describe any quality awards or certifications that indicate the offeror possesses a high-quality process for developing and producing the product or service required. Such awards or certifications include, for example, the Malcolm Baldrige Quality Award, other Government quality awards, and private sector awards or certifications.

(1) Identify the segment of the company (one division or the entire company) which received the award or certification.

(2) Describe when the award or certification was bestowed. If the award or certification is over three years old, present evidence that the qualifications still apply.

(g) Past performance information will be used for both responsibility determinations and as an evaluation factor for award. The Past Performance Questionnaire identified in section J will be used to collect information on an offeror's performance under existing and prior contracts/subcontracts for products or services similar in scope, magnitude, relevance, and complexity to this requirement in order to evaluate offerors consistent with the past performance evaluation factor set forth in section M. References other than those identified by the offeror may be contacted by the Government and used in the evaluation of the offeror's past performance.

(h) Any information collected concerning an offeror's past performance will be maintained in the official contract file.

(i) In accordance with FAR 15.305 (a) (2) (iv), offerors with no relevant past performance history, or for whom information on past performance is not available, will be evaluated neither favorably nor unfavorably on past performance.

* Indicates that the contracting officer inserts applicable dollar figure and number.

(End of clause)

18. Section 1552.217-77 is added to read as follows:

1552.217-77 [Added]

As prescribed in 1517.208(g), insert the following clause:

Option to Extend the Term of the Contract Fixed Price

October 2000

The Government has the option to extend the term of this contract for ____ additional period(s). If more than ____ days remain in the contract period of performance, the Government, without prior written notification, may exercise this option by issuing a contract modification. To exercise this option within the last ____ days of the period of performance, the Government must provide to the Contractor written notification prior to that last ____-day period. This preliminary notification does not commit the Government to exercising the option. Use of an option will result in the following contract modifications:

(a) The "Period of Performance" clause will be amended as follows to cover the Base and Option Periods:

Period	Start date	End date

(b) During the option period(s) the Contractor shall provide the services described below:

Period	Attachment

(c) The "Consideration and Payment" clause will be amended to reflect increased fixed prices for each option period as follows:

Fixed price	Option period

(End of clause)

19. Section 1552.219-70 Mentor-Protege Program is added to read as follows:

1552.219-70 Mentor-Protege Program.

As prescribed in 1519.203, insert the following clause:

Mentor-Protege Program

October 2000

(a) The Contractor has been approved to participate in the EPA Mentor-Protege program. The purpose of the Program is to increase the participation of small disadvantaged businesses (SDBs) as subcontractors, suppliers, and ultimately as prime contractors; to establish a mutually beneficial relationship with SDB's and EPA's large business prime contractors (although small businesses may participate as Mentors); to develop the technical and corporate administrative expertise of SDBs which will ultimately lead to greater success in competition for contract opportunities; to promote the economic stability of SDBs; and to aid in the achievement of goals for the use of SDBs in subcontracting activities under EPA contracts.

(b) The Contractor shall submit an executed Mentor-Protege agreement to the Contracting officer, with a copy to the Office

of Small and Disadvantaged Business Utilization or the Small Business Specialist, within thirty (30) calendar days after the effective date of the contract. The Contracting officer will notify the Contractor within thirty (30) calendar days from its submission if the agreement is not accepted.

(c) The Contractor as a Mentor under the Program agrees to fulfill the terms of its agreement(s) with the Protege firm(s).

(d) If the Contractor or Protege firm is suspended or debarred while performing under an approved Mentor-Protege agreement, the Contractor shall promptly give notice of the suspension or debarment to the Office of Small and Disadvantaged Business Utilization and the Contracting officer.

(e) Costs incurred by the Contractor in fulfilling their agreement(s) with the Protege firm(s) are not reimbursable on a direct basis under this contract.

(f) In an attachment to Standard Form 294, Subcontracts Report for Individual Contracts, the Contractor shall report on the progress made under their Mentor-Protege agreement(s), providing:

(1) The number of agreements in effect; and
(2) The progress in achieving the developmental assistance objectives under each agreement, including whether the objectives of the agreement have been met, problem areas encountered, and any other appropriate information.

(End of clause)

20. Section 1552.219-71, Procedures for Participation in the EPA Mentor-Protege Program, is added to read as follows:

1552.219-71 Procedures for Participation in the EPA Mentor-Protege Program.

As prescribed in 1519.203, insert the following provision:

Procedures for Participation in the EPA Mentor-Protege Program

October 2000

(a) This provision sets forth the procedures for participation in the EPA Mentor-Protege Program (hereafter referred to as the Program). The purpose of the Program is to increase the participation of small disadvantaged businesses (SDBs) as subcontractors, suppliers, and ultimately as prime contractors; to establish a mutually beneficial relationship with SDBs and EPA's large business prime contractors (although small businesses may participate as Mentors); to develop the technical and corporate administrative expertise of the SDBs which will ultimately lead to greater success in competition for contract opportunities; to promote the economic stability of SDBs; and to aid in the achievement of goals for the use of SDBs in subcontracting activities under EPA contracts. If the successful offeror is accepted into the Program they shall serve as a Mentor to a Protege (SDB) firm(s), providing developmental assistance in accordance with an agreement with the Protege firm(s).

(b) To participate as a Mentor, the offeror must receive approval in accordance with paragraph (h).

(c) A Protege must be a small disadvantaged business (SDB) as defined under Federal Acquisition Regulation (FAR) 19.001, and a small business for the purpose of the Small Business Administration (SBA) size standard applicable to the North American Industry Classification System (NAICS) code applicable to the contemplated supplies or services to be provided by the Protege firm to the Mentor firm. Further, consistent with EPA's 1993 Appropriation Act, socially disadvantaged individuals shall be deemed to include women.

(d) Where there may be a concern regarding the Protege firm's eligibility to participate in the program, the protege's eligibility will be determined by the contracting officer after the SBA has completed any formal determinations.

(e) The offeror shall submit an application in accordance with paragraph (k) as part of its proposal which shall include as a minimum the following information.

(1) A statement and supporting documentation that the offeror is currently performing under at least one active Federal contract with an approved subcontracting plan and is eligible for the award of Federal contracts;

(2) A summary of the offeror's historical and recent activities and accomplishments under their SDB program. The offeror is encouraged to include any initiatives or outreach information believed pertinent to approval as a Mentor firm;

(3) The total dollar amount (including the value of all option periods or quantities) of EPA contracts and subcontracts received by the offeror during its two preceding fiscal years. (Show prime contracts and subcontracts separately per year);

(4) The total dollar amount and percentage of subcontract awards made to all SDB firms under EPA contracts during its two preceding fiscal years. If recently required to submit a SF 295, provide copies of the two preceding year's reports;

(5) The number and total dollar amount of subcontract awards made to the identified Protege firm(s) during the two preceding fiscal years (if any).

(f) In addition to the information required by (e) above, the offeror shall submit as a part of the application the following information for each proposed Mentor-Protege relationship.

(1) Information on the offeror's ability to provide developmental assistance to the identified Protege firm and how the assistance will potentially increase contracting and subcontracting opportunities for the Protege firm, including subcontract opportunities in industry categories where SDBs are not dominant in the offeror's vendor base.

(2) A letter of intent indicating that both the Mentor firm and the Protege firm intend to enter into a contractual relationship under which the Protege will perform as a subcontractor under the contract resulting from this solicitation and that the firms will negotiate a Mentor-Protege agreement. Costs incurred by the offeror in fulfilling the

agreement(s) with the Protege firm(s) are not reimbursable as a direct cost under the contract. The letter of intent must be signed by both parties and contain the following information:

(i) The name, address and phone number of both parties;

(ii) The Protege firm's business classification, based upon the NAICS code(s) which represents the contemplated supplies or services to be provided by the Protege firm to the Mentor firm;

(iii) A statement that the Protege firm meets the eligibility criteria;

(iv) A preliminary assessment of the developmental needs of the Protege firm and the proposed developmental assistance the Mentor firm envisions providing the Protege. The offeror shall address those needs and how their assistance will enhance the Protege. The offeror shall develop a schedule to assess the needs of the Protege and establish criteria to evaluate the success in the Program.

(v) A statement that if the offeror or Protege firm is suspended or debarred while performing under an approval Mentor-Protege agreement the offeror shall promptly give notice of the suspension or debarment to the EPA Office of Small Disadvantaged Business Utilization (OSDBU) and the contracting officer. The statement shall require the Protege firm to notify the Contractor if it is suspended or debarred.

(g) The application will be evaluated on the extent to which the offeror's proposal addresses the items listed in (e) and (f). To the maximum extent possible, the application should be limited to not more than 10 single pages, double spaced. The offeror may identify more than one Protege in its application.

(h) If the offeror is determined to be in the competitive range, the offeror will be advised by the Contracting officer whether their application is approved or rejected. The Contracting officer, if necessary, may request additional information in connection with the offeror's submission of its revised or best and final offer. If the successful offeror has submitted an approved application, they shall comply with the clause titled "Mentor-Protege Program."

(i) Subcontracts of \$1,000,000 or less awarded to firms approved as Proteges under the Program are exempt from the requirements for competition set forth in FAR 44.202-2(a)(5), 52.244-2(b)(2)(iii) and 52.244-5. However, price reasonableness must still be determined and the requirements in FAR 44.202-2(a)(8) and 52.244-2(b)(2)(iv) for cost or price analysis continue to apply.

(j) Costs incurred by the offeror in fulfilling their agreement(s) with a Protege firm(s) are not reimbursable as a direct cost under the contract. Unless EPA is the responsible audit agency under FAR 42.703-1, offerors are encouraged to enter into an advance agreement with their responsible audit agency on the treatment of such costs when determining indirect cost rates. Where EPA is the responsible audit agency, these costs will be considered in determining indirect cost rates.

(k) Submission of Application and Questions Concerning the Program.

The application for the Program shall be submitted to the contracting officer, and to the EPA OSDBU, at the following addresses for headquarters procurements: Socioeconomic Business Program Officer, Office of Small and Disadvantaged Business Utilization, U. S. Environmental Protection Agency, Ariel Rios Building (3801R), 1200 Pennsylvania Avenue, NW, Washington, DC 20460, Telephone: (202) 564-4322, Fax: (202) 565-2473.

The application for the Program shall be submitted to the Contracting officer, and to the Small Business Specialist, at the following address for RTP procurements: Small Business Program Officer, Contracts Management Division (MD-33), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, Telephone: (919) 541-2249, Fax: (919) 541-5539.

The application for the Program shall be submitted to the Contracting officer, and to the Small Business Specialist, at the following address for Cincinnati procurements: Small and Disadvantaged Business Utilization Officer, Contracts Management Division, 26 West Martin Luther King Drive, Cincinnati, OH 45268, Telephone: (513) 487-2004, Fax: (513) 487-2342.

(End of provision)

21. Section 1552.219-72, Small Disadvantaged Business Participation Program, is added to read as follows:

1552.219-72 Small disadvantaged business participation program.

As prescribed in 1519.204(a), insert the following clause:

Small Disadvantaged Business Participation Program

October 2000

(a) Section M of this solicitation contains a source selection factor or subfactor related to the participation of small disadvantaged business (SDB) concerns in the performance of the contract. The nature of the evaluation of an SDB offeror under this evaluation factor or subfactor is dependent upon whether the SDB concern qualifies for the price evaluation adjustment under the clause at FAR 52.219-23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns and whether the SDB concern specifically waives this price evaluation adjustment.

(b) In order to be evaluated under the source selection factor or subfactor, an offeror must provide, with its offer, the following information:

(1) The extent of participation of SDB concerns in the performance of the contract in terms of the value of the total acquisition. Specifically, offerors must provide targets, expressed as dollars and percentages of the total contract value, for SDB participation in any of the Standard Industrial Classification (SIC) Major Groups as determined by the Department of Commerce. Total dollar and percentage targets must be provided for SDB participation by the prime contractor, including team members and joint venture partners. In addition, total dollar and

percentage targets for SDB participation by subcontractors must be provided and listed separately;

(2) The specific identification of SDB concerns to be involved in the performance of the contract;

(3) The extent of commitment to use SDB concerns in the performance of the contract;

(4) The complexity and variety of the work the SDB concerns are to perform; and

(5) The realism of the proposal to use SDB concerns in the performance of the contract.

(c) An SDB offeror who waives the price evaluation adjustment provided in FAR 52.219-23 shall provide, with their offer, targets, expressed as dollars and percentages of the total contract value, for the work that it intends to perform as the prime contractor in the applicable and authorized North American Industry Classification System (NAICS) Industry Subsectors as determined by the Department of Commerce. All of the offeror's identified targets described in paragraphs (b) and (c) of this clause will be incorporated into and made part of any resulting contract.

(End of provision)

22. Section 1552.219-73, Small Disadvantaged Business Targets, is added to read as follows:

1552.219-73 Small Disadvantaged Business Targets.

As prescribed in 1519.204(b), insert the following clause:

Small Disadvantaged Business Targets

October 2000

(a) In accordance with FAR 19.1202-4(a) and EP 52.219-145, the following small disadvantaged business (SDB) participation targets proposed by the contractor are hereby incorporated into and made part of the contract:

Contractor targets	SIC/NAICS major group	Dollars	Percentage of total contract value
Total Prime Contractor Targets (including joint venture members and team members)			
Total Subcontractor Targets			

(b) The following specifically identified SDB(s) was (were) considered under the Section M SDB participation evaluation factor or subfactor (continue on separate sheet if more space is needed):

- (1) _____
- (2) _____
- (3) _____
- (4) _____
- (5) _____

The contractor shall promptly notify the contracting officer of any substitution of firms if the new firms are not SDB concerns.

(c) In accordance with FAR 52.219-25, Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting, the contractor shall report on the participation of SDB concerns in the performance of the contract no less than thirty (30) calendar days prior to each annual contractor performance evaluation [contracting officer may insert the dates for each performance evaluation (i.e., every 12 months after the effective date of contract)] or as otherwise directed by the contracting officer.

(End of provision)

23. Section 1552.219-74, Small Disadvantaged Business Participation Evaluation Factor, is added to read as follows:

1552.219-74 Small disadvantaged business participation evaluation factor.

As prescribed in 1519.204(c), insert the following clause:

Small Disadvantaged Business Participation Evaluation Factor

October 2000

Under this factor [or subfactor, if appropriate], offerors will be evaluated based on the demonstrated extent of participation of small disadvantaged business (SDB) concerns in the performance of the contract in each of the authorized and applicable North American Industry Classification System (NAICS) Industry Subsectors as determined by the Department of Commerce. As part of this evaluation, offerors will be evaluated based on:

(1) The extent to which SDB concerns are specifically identified to participate in the performance of the contract;

(2) The extent of the commitment to use SDB concerns in the performance of the contract (enforceable commitments will be weighed more heavily than nonenforceable commitments);

(3) The complexity and variety of the work the SDB concerns are to perform under the contract;

(4) The realism of the proposal to use SDB concerns in the performance of the contract; and

(5) The extent of participation of SDB concerns, at the prime contractor and subcontractor level, in the performance of the contract (in the authorized and applicable NAICS Industry Subsectors in terms of dollars and percentages of the total contract value).

(End of provision)

24. Section 1552.223-72, Care of Laboratory Animals, is added to read as follows:

1552.223-72 Care of Laboratory Animals.

As prescribed in 1523.303-72, insert the following clause:

Care of Laboratory Animals

October 2000

(a) Before undertaking performance of any contract involving the use of laboratory animals, the Contractor shall register with the Secretary of Agriculture of the United States in accordance with section 6, Public Law 89-544, Laboratory Animal Welfare Act, August 24, 1966, as amended by Public Law 91-579, Animal Welfare Act of 1970, December 24, 1970. The Contractor shall furnish evidence of such registration to the contracting officer.

(b) The Contractor shall acquire animals used in research and development programs from a dealer licensed by the Secretary of Agriculture, or from exempted sources in accordance with the Public Laws enumerated in (a), above, of this provision.

(c) In the care of any live animals used or intended for use in the performance of this contract, the Contractor shall adhere to the principles enunciated in the Guide for Care and Use of Laboratory Animals prepared by the Institute of Laboratory Animal Resources, National Academy of Sciences (NAS)—National Research Council (NRC), and the United States Department of Agriculture's (USDA) regulations and standards issued under Public Laws enumerated in (a) above. In case of conflict between standards, the higher standard shall be used. The Contractor's reports on portions of the contract in which animals were used shall contain a certificate stating that the animals were cared for in accordance with the principles enunciated in the Guide for Care and Use of Laboratory Animals prepared by the Institute of Laboratory Animals Resources (NAS-NRC), and/or in the regulations and standards as promulgated by the Agricultural Research Service, USDA, pursuant to the Laboratory Animal Welfare Act of August 24, 1966 as amended (Public Law 89-544 and Public Law 91-579). NOTE: The Contractor may request registration of his facility and a current listing of licensed dealers from the Regional Office of the Animal and Plant Health Inspection Service (APHIS), USDA, for the region in which his research facility is located. The location of the appropriate APHIS Regional Office as well as information concerning this program may be obtained by contacting the Senior Veterinary, Animal Care Staff, USDA/APHIS, Federal Center Building, Hyattsville, MD 20782.

(End of clause)

25. Section 1552.232-73 is amended by revising paragraph (b) (2), to read as follows:

1552.232-73 Payments—Fixed-Rate Services Contract.

* * * * *

(b) Materials, other direct costs, and subcontracts.

* * * * *

(2) Subcontracted effort may be included in the fixed hourly rates discussed in paragraph (a)(1) of this clause and will be reimbursed as discussed in that paragraph. Otherwise, the cost of subcontracts that are authorized under the subcontracts clause of this contract shall be reimbursable costs under this clause provided that the costs are consistent with

subparagraph (3) of this clause. Reimbursable costs in connection with subcontracts shall be payable to subcontractors consistent with FAR 32.504 in the same manner as for items and services purchased directly for the contract under paragraph (a)(1) of this clause. Reimbursable costs shall not include any costs arising from the letting, administration, or supervision of performance of the subcontract, if the costs are included in the hourly rates payable under paragraph (a)(1) of this clause.

* * * * *

26. Section 1552.228-70, Insurance Liability to Third Persons, is added to read as follows:

1552.228-70 Insurance Liability to Third Persons.

As prescribed in 1528.101, insert the following clause:

Insurance—Liability to Third Persons

October 2000

(a)(1) Except as provided in subparagraph (2) below, the Contractor shall provide and maintain workers' compensation, employer's liability, comprehensive general liability (bodily injury), and comprehensive automobile liability (bodily injury and property damage) insurance, and such other insurance as the Contracting officer may require under this contract.

(2) The Contractor may, with the approval of the Contracting officer, maintain a self-insurance program; provided that, with respect to workers' compensation, the Contractor is qualified pursuant to statutory authority.

(3) All insurance required by this paragraph shall be in a form and amount and for those periods as the Contracting officer may require or approve and with insurers approved by the Contracting officer.

(b) The Contractor agrees to submit for the Contracting officer's approval, to the extent and in the manner required by the Contracting officer, any other insurance that is maintained by the Contractor in connection with the performance of this contract and for which the Contractor seeks reimbursement.

(c) The Contractor shall be reimbursed for that portion of the reasonable cost of insurance allocable to this contract, and required or approved under this clause, in accordance with its established cost accounting practices.

(End of clause)

27. Section 1552.235-80, Access to Confidential Business Information (CBI), is added to read as follows:

1552.235-80 Access to confidential business information.

As prescribed in 1535.007-70(g), insert the following clause.

Access to Confidential Business Information

October 2000

It is not anticipated that it will be necessary for the contractor to have access to confidential business information (CBI)

during the performance of tasks required under this contract. However, the following applies to any and all tasks under which the contractor will or may have access to CBI:

The contractor shall not have access to CBI submitted to EPA under any authority until the contractor obtains from the Project Officer a certification that the EPA has followed all necessary procedures under 40 CFR part 2, subpart B (and any other applicable procedures), including providing, where necessary, prior notice to the submitters of disclosure to the contractor.

(End of clause)

28. Section 1552.239-70, Rehabilitation Act Notice, is added to read as follows:

1552.239-70 Rehabilitation act notice.

As prescribed in 1523.7003(a), insert the following clause.

Rehabilitation Act Notice

October 2000

(a) EPA has a legal obligation under the Rehabilitation Act of 1973, 29 U.S.C. 791, to provide reasonable accommodation to persons with disabilities who wish to attend EPA programs and activities. Under this contract, the contractor may be required to provide support in connection with EPA programs and activities, including conferences, symposia, workshops, meetings, etc. In such cases, the contractor shall, as applicable, include in its draft and final meeting announcements (or similar documents) the following notice:

It is EPA's policy to make reasonable accommodation to persons with disabilities wishing to participate in the agency's programs and activities, pursuant to the Rehabilitation Act of 1973, 29 U.S.C. 791. Any request for accommodation should be made to the specified registration contact for a particular program or activity, preferably one month in advance of the registration deadline, so that EPA will have sufficient time to process the request.

(b) Upon receipt of such a request for accommodation, the contractor shall immediately forward the request to the EPA contracting officer, and provide a copy to the appropriate EPA program office. The contractor may be required to provide any accommodation that EPA may approve. However, in no instance shall the contractor proceed to provide an accommodation prior to receiving written authorization from the contracting officer.

(c) The contractor shall insert in each subcontract or consultant agreement placed hereunder provisions that shall conform substantially to the language of this clause, including this paragraph, unless otherwise authorized by the contracting officer.

(End of clause)

29. Section 1552.242-72, Financial administrative contracting officer, is added to read as follows:

1552.242-72 Financial administrative contracting officer.

As prescribed in 1542.705 (b), insert the following clause:

Financial Administrative Contracting Officer

October 2000

(a) A Financial Administrative Contracting Officer (FACO) is responsible for performing certain post-award functions related to the financial aspects of this contract when the EPA is the cognizant federal agency. These functions include the following duties:

(1) Review the contractor's compensation structure and insurance plan.

(2) Negotiate advance agreements applicable to treatment of costs and to Independent Research & Development/Bid and Proposal costs.

(3) Negotiate changes to interim billing rates and establish final indirect cost rates and billing rates.

(4) Prepare findings of fact and issue decisions related to financial matters under the Disputes clause, if appropriate.

(5) In connection with Cost Accounting Standards:

(A) Determine the adequacy of the contractor's disclosure statements;

(B) Determine whether the disclosure statements are in compliance with Cost Accounting Standards and FAR Part 31;

(C) Determine the contractor's compliance with Cost Accounting Standards and disclosure statements, if applicable; and

(D) Negotiate price adjustments and execute supplemental agreements under the Cost Accounting Standards clauses at FAR 52.230-3, 52.230-4, and 52.230-5.

(6) Review, approve or disapprove, and maintain surveillance of the contractor's purchasing system.

(7) Perform surveillance, resolve issues, and establish any necessary agreements related to the contractor's cost/schedule control system, including travel policies/procedures, allocation and cost charging methodology, timekeeping and labor distribution policies and procedures, subcontract payment practices, matters concerning relationships between the contractor and its affiliates and subsidiaries, and consistency between bid and accounting classifications.

(8) Review, resolve issues, and establish any necessary agreements related to the contractor's estimating system.

(b) The FACO shall consult with the contracting officer whenever necessary or appropriate and shall forward a copy of all agreements/decisions to the contracting officer upon execution.

(c) The FACO for this contract is:

(End of clause)

30. Section 1552.245-73, Government Property, is added to read as follows:

1552.245-73 Government property.

As prescribed in 1545.106(d), insert the following clause:

Government Property

October 2000

(a) The contractor shall not fabricate or acquire, on behalf of the Government, either

directly or indirectly through a subcontract, any item of property without written approval from the Contracting officer.

(b) In accordance with paragraph (a) above, the contractor is authorized to acquire and/or fabricate the equipment listed below for use in the performance of this contract. The equipment is subject to the provisions of the "Government Property" clause.

(c) The Government will provide the following item(s) of Government property to the contractor for use in the performance of this contract. This property shall be used and maintained by the contractor in accordance with the provisions of the "Government Property" clause.

(d) The "EPA Contract Property Administration Requirements" provided below apply to this contract.

U.S. Environmental Protection Agency

Property Administration Requirements (PAR)

1. *Purpose.* This document sets forth the requirements for Environmental Protection Agency (EPA) contractors in the performance of their Government property management responsibilities under contracts with EPA. These requirements supplement those contained in the Government property clause(s) in this contract, and part 45 of the Federal Acquisition Regulation (FAR).

2. *Delegation of Contract Property Administration.* EPA has delegated much of its contract property management oversight to the Defense Contract Management Command (DCMC). Shortly after award of a contract, the EPA contracting officer (CO) delegates the functions of property administration and plant clearance (disposal) for the contract to DCMC. Upon acceptance of that delegation, DCMC will provide notification to the contractor, identifying the assigned property administrator (PA) and plant clearance officer (PLCO). If the contract is not delegated to DCMC for administration, any reference to PA and PLCO throughout this document shall be construed to mean CO. The DCMC PA is available to the contractor for assistance in all matters of property administration. Notwithstanding the delegation, as necessary, the contractor may contact their EPA CO. In the event of disagreement between the contractor and the DCMC PA, the contractor should seek resolution from the CO. Unless otherwise directed in the contract, or this document, all originals of written information or reports, except direct correspondence between the contractor and the DCMC PA, relative to Government property, should be forwarded to the administrative CO assigned to this contract.

3. *Requests for Government Property.*

a. In accordance with FAR 45.102, the contractor shall furnish all property required for performing Government contracts. If a contractor believes that Government facilities are required for performance of the contract, the contractor shall submit a written request to the CO. At a minimum, the request shall contain the following elements:

1. Contract number for which the facilities are required.

2. An item(s) description, quantity and estimated cost.

3. Certification that no like contractor facilities exist which could be utilized.

4. A detailed description of the task-related purpose of the facilities.

5. Explanation of negative impact if facilities are not provided by the Government.

6. If applicable, recommend the exception under FAR 45.302-1(a) or any applicable EPA class deviation (available upon request), and provide any other information which would support the furnishing of facilities, including contractor-acquired property (CAP).

7. Except when the request is for material, a lease versus purchase analysis shall be furnished with the request to acquire property on behalf of the Government. The contractor may not proceed with acquisition of facilities on behalf of the Government until receipt of written authorization from the EPA CO.

4. *Transfer of Government Property.* When the contractor receives Government-furnished property (GFP), the contractor should receive, from the transferor, (either EPA or another contractor) all of the applicable data elements (Attachment 1 of this clause) needed to maintain the required records. If this information is not provided at the time of receipt of the property, the contractor shall request it from the EPA CO. The CO will attempt to obtain the data from the previous property holder, or, if data does not exist, will assist the current property holder in estimating the elements. Prior to signing an acceptance document for the property, the receiving contractor should perform a complete inventory of the property. Responsibility, as well as accountability, passes with the signed acceptance. When, at the written direction of the EPA CO, the contractor transfers GFP to another contractor, or another Agency, the contractor shall provide the applicable data elements (Attachment 1 of this clause). Upon return of the property to EPA, the same data must be provided by the contractor to the EPA CO.

5. *Records of Government Property.*

a. In accordance with FAR 45.505 and 45.505-1, the contractor shall establish and maintain adequate property records for all Government property, regardless of value, including property provided to and in the possession of a subcontractor. Material (supplies) provided by the Government or acquired by the contractor and billed as a direct charge to the Government is Government property and records must be established as such.

b. The contractor shall establish and maintain the official Government property record. (If the contract contains the FAR Clause 52.245-1, the Government will maintain the official Government property records.) Such records shall contain the applicable data elements (Attachment 1 of this clause) for all items of Government property regardless of cost.

c. The Contractor shall identify all Superfund property and designate it as such both on the item and on the official Government property record. If it is not practicable to tag the item, the contractor shall write the ID number on a tag, card or

other entity that may be kept with the item or in a file.

d. Support documentation used for posting entries to the property record shall provide complete, current and auditable data. Entries shall be posted to the record in a timely manner following an action.

e. For Government vehicles, in addition to the data elements required by EPA, the contractor shall also comply with the General Services Administration (GSA) and Department of Energy (DOE) record and report requirements supplied with all EPA provided motor vehicles. If the above requirements were not provided with the vehicle, the contractor shall notify the EPA CO.

f. When Government property is disclosed to be in the possession or control of the contractor but not provided under any contract, the contractor shall record and report the property in accordance with FAR 45.502(f) and (h).

6. *Inventories of Government Property.* The contractor shall conduct a complete physical inventory of EPA property at least once per year, unless otherwise directed by the PA. Reconciliation shall be completed within 30 calendar days of inventory completion. The contractor shall report the results of the inventory, including any discrepancies, to the DCMC PA upon completion of the reconciliation. The contractor's records shall indicate the completion date of the inventory. See section 9 herein. Contract Closeout, for information on final inventories.

7. *Reports of Government Property.* In accordance with FAR 45.505-14, EPA requires an annual summary report, for each contract, by contract number, of Government property in the contractor's possession as of September 30 each year.

a. For each classification listed in FAR 45.505-14(a), except material, the contractor shall provide the total acquisition cost and total quantity. If there are zero items in a classification, or if there is an ending balance of zero, the classification must be listed with zeros in the quantity and acquisition cost columns.

b. For material, the contractor shall provide the total acquisition cost only.

c. Property classified as facilities, special tooling, special test equipment, and agency peculiar must be reported on two separate lines. The first line shall include the total acquisition cost and quantity of all items or systems with a unit acquisition cost of \$25,000 or more. The second line shall include the total acquisition cost and quantity of all items with a unit acquisition cost of less than \$25,000.

d. For items comprising a system, which is defined as "a group of interacting items functioning as a complex whole," the contractor may maintain the record as a system noting all components of the system under the main component or maintain individual records for each item. However, for the annual report of Government property the components must be reported as a system with one total dollar amount for the system, if that system total is \$25,000 or more.

e. The reports are to be received at EPA and DCMC no later than October 31 of each year.

f. Distribution shall be as follows:

Original to: EPA CO

1 copy: DCMC PA

g. EPA Contractors are required to comply with GSA's and DOE's special reporting requirements for motor vehicles. A statement of these requirements will be provided by the EPA Facility Management and Services Division (FMSD) concurrent with receipt of each vehicle.

h. The contractor shall provide detailed reports on an as-needed basis, as may be requested by the CO or the PA.

8. *Disposition of Government Property.* The disposition process is composed of three distinct phases: identification of excess property, reporting of excess property, and final disposition.

a. *Identification of Excess Property.* The disposition process begins with the contractor identifying Government property that is excess to its contract. Effective contractor property control systems provide for disclosing excesses as they occur. Once inactive Government property has been determined to be excess to the contract to which it is accountable, it must be screened against the contractor's other EPA contracts for further use. If the property may be reutilized, the contractor shall notify the CO in writing. Government property will be transferred to other contracts only when the COs on both the current contract and the receiving contract authorize such a transfer in writing.

b. *Reporting Excess Government Property.* Excess Government property shall be reported in accordance with FAR Subpart 45.6. Inventory schedules A-E (SF Forms 1426-1434) provide the format for reporting of excess Government property. Instructions for completing the forms are located at FAR 45.606-5 and samples may be found in FAR 53.301-1426 thru 1434. Inventory schedules shall be forwarded to the DCMC PLCO with a copy to the EPA CO. The cover letter, which accompanies the inventory schedules, must include the EPA CO's name, address and telephone number. Inventory schedules must also contain a notification if the property is Superfund property. If the property is Superfund property, the contractor must also prominently include the following language on the inventory schedule: "Note to PLCO: Reimbursement to the EPA Superfund is required." When requested, by the PLCO or the CO, the contractor will provide the fair market value for those items requested.

c. *Disposition Instructions.*

1. If directed in writing by the EPA CO, the contractor will retain all or part of the excess Government property under the current contract for possible future requirements. The contractor shall request, from the PLCO, withdrawal from the inventory schedule of those items to be retained.

2. If directed in writing by the EPA CO, the contractor shall transfer the property to another EPA contractor. The contractor will transfer the property by shipping it in accordance with the instructions provided by the CO. The contractor shall request, from the PLCO, withdrawal from the inventory schedule of those items to be transferred. Further, the contractor shall notify the CO when the transfer is complete.

3. If directed in writing by the EPA CO, the contractor shall transfer the property to EPA. The contractor shall ship/deliver the property in accordance with the instructions provided by the CO. The contractor will request, from the PLCO, withdrawal from the inventory schedule of those items to be transferred to EPA. Further, the contractor shall notify the CO when the transfer is complete.

4. The contractor will ship the property elsewhere if directed, in writing, by the PLCO.

5. The PLCO will either conduct the sale or instruct the contractor to conduct a sale of surplus property. The contractor will allow prospective bidders access to property offered for sale.

6. Property abandoned by the PLCO on the contractor's site must be disposed of in a manner that does not endanger the health and safety of the public.

7. To effect transfer of accountability, the contractor shall provide the recipient of the property with the applicable data elements set forth in Attachment 1 of this clause. The contractor shall also obtain either a signed receipt from the recipient, or proof of shipment. The contractor shall update the official Government property record to indicate the disposition of the item and to close the record.

9. *Contract Closeout.* The contractor shall complete a physical inventory of all Government property at contract completion and the results, including any discrepancies, shall be reported to the DCMC PA. In the case of a terminated contract, the contractor shall comply with the inventory requirements set forth in the applicable termination clause. The results of the inventory, as well as a detailed inventory listing, must be forwarded to the CO. For terminated contracts, the contractor will conduct and report the inventory results as directed by the CO. However, in order to expedite the disposal process, contractors may be required to, or may elect to submit to the CO, an inventory schedule for disposal purposes up to six (6) months prior to contract completion. If such an inventory schedule is prepared, the contractor must indicate the earliest date that each item may be disposed. The contractor shall update all property records to show disposal action. The contractor shall notify the DCMC PA, in writing, when all work has been completed under the contract and all Government property accountable to the contract has been disposed.

Attachment 1

Required Data Elements. Where applicable (all elements are not applicable to material) the contractor is required to maintain, at a minimum, the information related to the following data elements for EPA Government property: Contractor Identification/Tag Number; Description; Manufacturer; Model; Serial Number; Acquisition Date; Date received; Acquisition Cost*; Acquisition Document Number; Location; Contract Number; Account Number (if supplied); Superfund (Yes/No); Inventory Performance Date; Disposition Date.

* Acquisition cost shall include the price of the item plus all taxes, transportation and installation charges allocable to that item.

Note: For items comprising a system which is defined as, "a group of interacting items functioning as a complex whole," the contractor may maintain the record as a system noting all components of the system under the main component or maintain individual records for each item. However, for the Annual Report of Government Property, the components must be reported as a system with one total dollar amount for the system, if that system total is \$25,000 or more.

(End of clause)

Dated: September 21, 2000.

John C. Gherardini,

Acting Director, Office of Acquisition Management.

[FR Doc. 00-25046 Filed 10-2-00; 8:45 am]

BILLING CODE 6560-50-P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1807, 1811, 1815, 1816, 1817, 1819, 1834, 1843, 1845, and 1852

North American Industry Classification System (NAICS)

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This is a final rule amending the NASA Federal Acquisition Regulation Supplement (NFS) to conform to changes made in the Federal Acquisition Regulation (FAR) by Federal Acquisition Circular (FAC) 97-19 and make editorial corrections and miscellaneous changes dealing with NASA internal and administrative matters.

EFFECTIVE DATE: October 3, 2000.

FOR FURTHER INFORMATION CONTACT: Celeste Dalton, Code HK, (202) 358-1645, e-mail: celeste.dalton@hq.nasa.gov.

SUPPLEMENTARY INFORMATION:

A. Background

Federal Acquisition Circular (FAC) 97-19 replaced the Standard Industrial Classification (SIC) system with the North American Industry Classification System (NAICS). Additionally, FAC 97-19 amended the title to section 7.107, revised subpart 11.5, and amended section 43.205. This final rule amends the NASA FAR Supplement (NFS) to conform to these changes. Changes unrelated to FAC 97-19 are made to: update references to internal documents; revise the dollar threshold for use of Government bills of lading at 1852.247-73; revise the instructions for amending the clause at 1852.242-70

when its Alternate II is used; and make a technical correction at 1819.202.

B. Regulatory Flexibility Act

NASA certifies that this final rule does not have a significant economic impact on a substantial number of small business entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), because it does not impose new requirements on offerors or contractors.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the NFS do not impose any recordkeeping or information collection requirements, or collection of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 1807, 1811, 1815, 1816, 1817, 1819, 1834, 1843, 1845, and 1852

Government procurement.

Thomas S. Luedtke,

Associate Administrator for Procurement.

Accordingly, 48 CFR Parts 1807, 1811, 1815, 1816, 1817, 1819, 1834, 1843, 1845, and 1852 are amended as follows:

1. The authority citation for 48 CFR Parts 1807, 1811, 1815, 1816, 1817, 1819, 1834, 1843, 1845, and 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1807—ACQUISITION PLANNING

2. Revise the section heading at 1807.107 to read as follows:

1807.107 Additional requirements for acquisitions involving bundling.

PART 1811—DESCRIBING AGENCY NEEDS

3. Revise subpart 1811.5 to read as follows:

Subpart 1811.5—Liquidated Damages

1811.501 Policy.

(d) The procurement officer must forward recommendations concerning remission of liquidated damages to the Headquarters Office of Procurement (Code HS).

PART 1815—CONTRACTING BY NEGOTIATION

1815.7001 [Amended]

4. Amend section 1815.7001 by removing the words "Procurement Guidance" and adding the words

“Procurement Advocacy Programs” in its place.

PART 1816—TYPES OF CONTRACTS

1816.405–274 [Amended]

5. Amend paragraphs (g)(2) and (g)(4) of section 1816.405–274, by removing the acronym “SIC” and adding “NAICS” in its place.

PART 1817—SPECIAL CONTRACTING METHODS

1817.7101 [Amended]

6. In section 1817.7101, amend paragraph (b) by removing the acronym “NHB” and adding “NPG” in its place.

PART 1819—SMALL BUSINESS PROGRAMS

1819.202–1 [Removed]

7. Remove section 1819.202–1.

1819.201 [Amended]

8. Amend paragraph (f)(1) of section 1819.201 by removing the acronym “SIC” and adding “NAICS” in its place.

9. Revise section 1819.1005 to read as follows:

1819.1005 Applicability.

(b) The targeted industry categories for NASA and their North American Industry Classification System (NAICS) codes are:

NAICS code	Industry category
334111	Electronic Computer Manufacturing.
334418	Printed Circuit Assembly (Electronic Assembly) Manufacturing.
334613	Magnetic and Optical Recording Media Manufacturing.
334119	Other Computer Peripheral Equipment Manufacturing.
33422	Radio and Television Broadcasting and Wireless Communication Equipment Manufacturing.
336415	Guided Missile and Space Vehicle Propulsion Unit and Propulsion Unit Parts Manufacturing.
54171	Research and Development in the Physical Engineering and Life Sciences.
336419	Other Guided Missile and Space Vehicle Parts and Auxiliary Equipment Manufacturing.
334511	Search, Detection, Navigation, Guidance, Aeronautical, and Nautical Systems and Instrument Manufacturing.
333314	Optical Instrument and Lens Manufacturing.
541511	Custom Computer Programming Services.
541512	Computer Systems Design Services.
51421	Data Processing Services.
541519	Other Computer Related Services.

1819.7208 [Amended]

10. Amend paragraph (b)(1) of section 1819.7208 by removing the acronym “SIC” and adding “NAICS” in its place.

1819.7209 [Amended]

11. Amend paragraphs (a)(1) and (a)(2) of section 1819.7209 by removing the acronym “SIC” and adding “NAICS” in its place.

PART 1834—MAJOR SYSTEM ACQUISITIONS

12. Revise section 1834.003 to read as follows:

1834.003 Responsibilities.

(a) NASA’s implementation of OMB Circular No. A–109, Major System Acquisition, and FAR Part 34 is contained in this part and in NASA Policy Directive (NPD) 7120.4, “Program/Project Management,” and NASA Procedures and Guidelines (NPG) 7120.5, “NASA Program and Project Management Processes and Requirements”.

PART 1843—CONTRACT MODIFICATIONS

13. Revise section 1843.205 to read as follows:

1843.205 Contract clauses.

As authorized in the prefaces of clauses FAR 52.243–1, Changes—Fixed Price; FAR 52.243–2, Changes—Cost

Reimbursement; and FAR 52.243–4, Changes; and in the prescription at 43.205(c) for FAR 52.243–3, Changes—Time-and-Material or Labor-Hours, the period within which a contractor must assert its right to an equitable adjustment may be varied not to exceed 60 calendar days.

PART 1845—GOVERNMENT PROPERTY

1845.608–1 [Amended]

14. In section 1845.608–1, amend paragraph (a) by removing the acronym “NHB” and adding “NPG” in its place.

1845.610–4 [Amended]

15. Amend section 1845.610–4 by removing the acronym “NHB” and adding “NPG” in its place.

1845.613 [Amended]

16. Amend section 1845.613 by removing the acronym “NHB” and adding “NPG” in its place.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

17. In ALTERNATE II to the clause at section 1852.242–72, revise the introductory text to read as follows:

1852.242–72 Observance of legal holidays.

* * * * *

Alternate II

October 2000

As prescribed in 1842.7001(c), add the following as paragraphs (e) and (f) if Alternate I is used, or as paragraphs (c) and (d) if Alternate I is not used. If added as paragraphs (c) and (d), amend the first sentence of paragraph (d) by deleting “(e)” and adding “(c)” in its place.

* * * * *

1852.247–73 [Amended]

18. In section 1852.247–73, amend paragraphs (a) and (b) by removing “\$100” and adding “\$1,000” in its place.

[FR Doc. 00–25248 Filed 10–2–00; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 1837

Acquisition of Training Services

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This final rule amends the NASA FAR Supplement (NFS) by removing regulations on Acquisition of Training to conform the acquisition of training with FAR regulations.

EFFECTIVE DATE: October 1, 2000.

FOR FURTHER INFORMATION CONTACT:

James H. Dolvin, NASA Headquarters, Office of Procurement, Contract Management Division (Code HK), Washington, DC 20546. (202) 358-1279, email: jdolvin1@mail.hq.nasa.gov.

SUPPLEMENTARY INFORMATION:

A. Background

In 1991, Subpart 1837.70, Acquisition of Training, was added to the NFS. Section 1837.7000, Acquisition of off-the-shelf training courses, provided that the Government Employees Training Act of 1958, 5 U.S.C. 4101 *et seq.*, could be used as the authority for acquisition of "non-Governmental off-the-shelf training courses which are available to the public." Subpart 1837.7001, Acquisition of new training courses, provided that acquisition of new training courses "developed to fill a specific NASA need" must be conducted in accordance with the FAR. This subpart is being removed because it has caused confusion within NASA about the relevance of the FAR to training service procurement.

A proposed rule was published in the **Federal Register** at 65 FR 43730, dated July 14, 2000. No comments were received, and this final rule adopts the proposed rule without change.

B. Regulatory Flexibility Act

NASA certifies that this rule will not have a significant economic impact on a substantial number of small business entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because the deletion of this subpart will not alter the manner in which NASA is required to acquire training.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the NFS do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 1837

Government Procurement

Anne Guenther,

Acting Associate Administrator for Procurement.

Accordingly, 48 CFR Part 1837 is proposed to be amended as follows:

1. The authority citation for 48 CFR Part 1837 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1)

PART 1837—SERVICE CONTRACTING

2. Subpart 1837.70 is removed.

[FR Doc. 00-25249 Filed 10-2-00; 8:45 am]

BILLING CODE 7510-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AF98

Endangered and Threatened Wildlife and Plants; Final Determination of Critical Habitat for the Alameda Whipsnake (*Masticophis lateralis euryxanthus*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), designate critical habitat under the Endangered Species Act of 1973, as amended (Act), for the Alameda whipsnake (*Masticophis lateralis euryxanthus*). A total of approximately 164,150 hectares (406,598 acres) of land fall within the boundaries of designated critical habitat. Critical habitat for the Alameda whipsnake is located in Contra Costa, Alameda, San Joaquin, and Santa Clara counties, California. Section 7 of the Act requires Federal agencies to ensure that actions they authorize, fund, or carry out are not likely to destroy or adversely modify designated critical habitat. As required by section 4 of the Act, we considered economic and other relevant impacts prior to making a final decision on the size and configuration of critical habitat.

EFFECTIVE DATE: This final rule is effective November 2, 2000.

ADDRESSES: The complete administrative record for this rule is on file at the U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, Suite W-2605, Sacramento, California 95825. The complete file for this rule is available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT:

Jason Davis or Heather Bell, at the above address (telephone 916/414-6600, facsimile 916/414-6713).

SUPPLEMENTARY INFORMATION:

Background

The Alameda whipsnake is a slender, fast-moving, diurnal snake with a broad head, large eyes, and slender neck.

Alameda whipsnakes range from 91 to 122 centimeters (3 to 4 feet) in length. The dorsal surface is sooty black in color with a distinct yellow-orange stripe down each side. The forward portion of the bottom surface is orange-rufous colored, the midsection is cream colored, and the rear portion and tail are pinkish. The adult Alameda whipsnake virtually lacks black spotting on the bottom surface of the head and neck. Juveniles may show very sparse or weak black spots. Another common name for the Alameda whipsnake is the "Alameda striped racer" (Riemer 1954, Jennings 1983, Stebbins 1985).

The Alameda whipsnake is one of two subspecies of the California whipsnake (*Masticophis lateralis*). The chaparral whipsnake (*Masticophis lateralis lateralis*) is distributed from northern California, west of the Sierran crest and desert, to central Baja California. The Alameda whipsnake is restricted to a small portion of this range, primarily the inner Coast Range in western and central Contra Costa and Alameda Counties.

The distribution in California, of both subspecies, coincides closely with chaparral (Jennings 1983, Stebbins 1985). Recent telemetry data indicate that, although home ranges of Alameda whipsnakes are centered on shrub communities, whipsnakes frequently venture into adjacent habitats, including grassland, oak savanna, and occasionally oak-bay woodland. Most telemetry locations are within 50 meters (m) (170 feet (ft)) of scrub habitat, but distances of greater than 150 m (500 ft) occur (Swaim 1994). Initial data indicate that adjacent habitats may play a crucial role in certain life history and physiological needs of the Alameda whipsnake, but the full extent has yet to be determined. Telemetry data indicate that whipsnakes remain in grasslands for periods ranging from a few hours to several weeks at a time. Grassland habitats are used by male whipsnakes most extensively during the mating season in spring. Female whipsnakes use grassland areas most extensively after mating, possibly in their search for suitable egg-laying sites (Swaim 1994).

Rock outcrops can be an important feature of Alameda whipsnake habitat because they provide retreat opportunities for whipsnakes and support lizard populations. Lizards, especially the western fence lizard (*Sceloporus occidentalis*), appear to be the most important prey item of whipsnakes (Stebbins 1985; Swaim 1994; Harry Green, Museum of Vertebrate Zoology, U.C. Berkeley, pers. comm. 1998), although other prey items are taken, including skinks, frogs,

snakes, and birds (Stebbins 1985, Swaim 1994). Most radio telemetry locations for whipsnakes were within the distribution of major rock outcroppings and talus (a sloping mass of rock debris at the base of a cliff) (Swaim 1994).

Alameda whipsnakes have been found in association with a variety of shrub communities including diablan sage scrub, coyote bush scrub, and chamise chaparral (Swaim 1994), also classified as coastal scrub, mixed chaparral, and chamise-redshank chaparral (Mayer and Laudenslayer 1988). However, the type of vegetation may have less to do with preference by the whipsnake than the extent of the canopy, slope exposure, the availability of retreats such as rock outcrops and rodent burrows, and prey species composition and abundance (Swaim 1994; K. Swaim, Swaim Biological Consulting, pers. comm. 1999). Alameda whipsnakes have been sighted or found dead a significant distance from the nearest shrub community (K. Swaim, pers. comm. 1999). The reasons for such movements are unknown.

Initial studies indicated that Alameda whipsnakes occurred where the canopy was open (less than 75 percent of the total area within the scrub or chaparral community was covered by shrub crown) or partially open (between 75 and 90 percent of the total area was covered with shrub crown), and only seldom did whipsnakes occur in closed canopy (greater than 90 percent of the area was covered by shrub crown). However, trapping efforts may have been biased due to the difficulty of setting traps in dense scrub (Swaim 1994; K. Swaim, pers. comm. 1999).

Core areas (areas of concentrated use) of the Alameda whipsnake most commonly occur on east, south, southeast, and southwest facing slopes (Swaim 1994). However, recent information indicates that whipsnakes do make use of north facing slopes in more open stands of scrub habitat (K. Swaim, pers. comm. 1999).

Adult snakes appear to have a bimodal (two times of the year) seasonal activity pattern with peaks during the spring mating season and a smaller peak during late summer and early fall. Although short above-ground movements may occur during the winter, Alameda whipsnakes generally retreat in November into a hibernaculum (shelter used during the snake's dormancy period) and emerge in March. Courtship and mating occur from late-March through mid-June. During this time, males move around throughout their home ranges, while females appear to remain at or near their

hibernaculum, where mating occurs. Suspected egg-laying sites for two females were located in grassland with scattered shrub habitat. Male home ranges of 1.9 to 8.7 hectares (ha) (4.7 to 21.5 acres (ac)) (mean of 5.5 ha or 13.6 ac) were recorded, and showed a high degree of spatial overlap. Several individual snakes monitored for nearly an entire activity season appeared to maintain a stable home range. Movements of these individuals were multi-directional, and individual snakes returned to specific areas and retreat sites after long intervals of non-use. Snakes had one or more core areas within their home range, while large areas of the home range received little use (Swaim 1994).

Previous Federal Action

The September 18, 1985, Notice of Review (50 FR 37958) included the Alameda whipsnake as a category 2 candidate species for possible future listing as endangered or threatened. Category 2 candidates were those taxa for which listing as threatened or endangered might be warranted, but for which adequate data on biological vulnerability and threats were not available to support issuance of listing proposals. The January 6, 1989, Notice of Review (54 FR 554) solicited information on its status as a category 2 candidate species. The Alameda whipsnake was moved to category 1 in the November 21, 1991, Notice of Review (56 FR 58804) on the basis of significant increases in habitat loss and threats occurring throughout its range. Category 1 candidates were defined as taxa for which we had on file substantial information on biological vulnerability and threats to support preparation of listing proposals. On February 4, 1994, we published a proposed rule in the **Federal Register** (59 FR 5377) to list the Alameda whipsnake as an endangered species. On December 5, 1997, we published a final rule listing the Alameda whipsnake as threatened (62 FR 64306).

On March 4, 1999, the Southwest Center for Biological Diversity, the Center for Biological Diversity, and Christians Caring for Creation filed a lawsuit in the Northern District of California against the U.S. Fish and Wildlife Service and Bruce Babbitt, Secretary of the Department of the Interior (Secretary), for failure to designate critical habitat for seven species: The Alameda whipsnake (*Masticophis lateralis euryxanthus*), the Zayante band-winged grasshopper (*Trimerotropis infantilis*), the Morro shoulderband snail (*Helminthoglypta walkeriana*), the Arroyo southwestern

toad (*Bufo microscaphus californicus*), the San Bernardino kangaroo rat (*Dipodomys merriami parvus*), the spectacled eider (*Somateria fischeri*), and the Steller's eider (*Polysticta stelleri*) (*Southwest Center for Biological Diversity v. U.S. Fish and Wildlife*, CIV 99–1003 MMC).

On November 5, 1999, William Alsup, U.S. District Judge, dismissed the plaintiffs' lawsuit under a settlement agreement entered into by the parties. On March 8, 2000, (65 FR 12155) we proposed the designation of 7 areas within Alameda, Contra Costa, San Joaquin, and Santa Clara Counties as critical habitat for the Alameda whipsnake.

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) the specific areas within the geographic area occupied by a species, at the time it is listed under the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management consideration or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon determination that these areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures that are necessary to bring an endangered species or a threatened species to the point at which listing under the Act is no longer necessary.

Section 4(b)(2) of the Act requires that we base critical habitat proposals upon the best scientific and commercial data available, after taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude areas from critical habitat designation when the benefits of exclusion outweigh the benefits of including the areas within critical habitat, provided the exclusion will not result in extinction of the species (section 4(b)(2) of the Act).

Designation of critical habitat can help focus conservation activities for a listed species by identifying areas that contain the physical and biological features that are essential for conservation of that species. Designation of critical habitat alerts the public as well as land-managing agencies to the importance of these areas.

Critical habitat also identifies areas that may require special management considerations or protection, and may provide protection to areas where significant threats to the species have

been identified. Critical habitat receives protection from destruction or adverse modification through required consultation under section 7 of the Act with regard to actions carried out, funded, or authorized by a Federal agency. Aside from the protection that may be provided under section 7, the Act does not provide other forms of protection to lands designated as critical habitat.

Section 7(a)(2) of the Act requires Federal agencies to consult with us to ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a threatened or endangered species, or result in the destruction or adverse modification of critical habitat. "Jeopardize the continued existence" (of a species) is defined as an appreciable reduction in the likelihood of survival and recovery of a listed species.

"Destruction or adverse modification" (of critical habitat) is defined as a direct or indirect alteration that appreciably diminishes the value of critical habitat for the survival and recovery of the listed species for which critical habitat was designated. Thus, the definitions of "jeopardy" to the species and "adverse modification" of critical habitat are nearly identical (50 CFR 402.02). When multiple units of critical habitat are designated, each unit may serve as the basis of an adverse modification analysis if protection of different facets of the species' life cycle or its distribution are essential to the species as a whole for both its survival and recovery.

Designating critical habitat does not, in itself, lead to recovery of a listed species. Designation does not create or mandate a management plan, establish numerical population goals, prescribe specific management actions (inside or outside of critical habitat), or directly affect areas not designated as critical habitat. Specific management recommendations for critical habitat are most appropriately addressed in recovery plans and management plans, and through section 7 consultation.

We did not propose to designate critical habitat for the Alameda whipsnake within the proposed or final listing rulemaking because, at the time of listing, we knew of no Federal lands within the five whipsnake populations. We also believed that the possibility of Federal agency involvement on private and public, non-Federal lands was remote. Based on information available at the time of listing, we believed that only 20 percent of known whipsnake habitat occurred on private lands, and anticipated that urban development on private lands would occur only along

the periphery of whipsnake populations. In addition, we believed that the need for active fire management programs at this urban-wildland interface would preclude those private lands from being considered habitat essential to the conservation of the species. We found that critical habitat designation was not prudent due to lack of any significant benefit beyond that conferred by listing.

Since the Alameda whipsnake was listed, we have found that there are a greater number of Federal actions that could trigger the need for an interagency consultation than was believed at the time the Alameda whipsnake was listed. We are now aware of federally owned lands that occur within the range of the Alameda whipsnake, including Bureau of Land Management parcels in the Mount Diablo-Black Hills population area. In addition, an Alameda whipsnake was recently captured on land owned by the U.S. Department of Energy at their Site 300 facility, a Federal site not previously known to be inhabited by Alameda whipsnakes. We are also aware of a number of activities with a Federal connection on private lands within the range of the whipsnake, including activities associated with the issuance of Clean Water Act section 404 permits and Federal Emergency Management Agency fire protection projects.

We now believe that private lands play a more important role in whipsnake conservation than we originally believed. An increasing amount of private land has been found to be occupied by the Alameda whipsnake, comprising more than 20 percent of land within the five whipsnake populations. High-value Alameda whipsnake habitat occurs on private lands that are evenly distributed throughout all five whipsnake population areas. We now believe that private lands are essential to the conservation of the species.

Relationship to Recovery

The ultimate purpose of listing a species as threatened or endangered under the Act is to recover the species to the point at which it no longer needs the protections provided to the listed species. The Act mandates the conservation of listed species through different mechanisms. Section 4(f) of the Act authorizes the Service to develop recovery plans for listed species. A recovery plan includes (i) a description of such site-specific management actions as may be necessary to achieve the plan's goal for the conservation and survival of the species, (ii) objective, measurable criteria which, when met,

would result in a determination that the species be removed from the list, and (iii) estimates of the time required and cost to carry out those measures needed to achieve the plan's goal.

We are currently drafting a recovery plan for the Alameda whipsnake. This draft recovery plan will include a more thorough analysis of recovery needs of the Alameda whipsnake. Therefore, we may amend critical habitat at a later date based on information gained through the recovery planning process.

Primary Constituent Elements

Under section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, we are required to base critical habitat determinations on the best scientific and commercial data available and to consider those physical and biological features that are essential to conservation of the species and that may require special management considerations or protection. Such requirements include, but are not limited to, space for individual and population growth, and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or rearing of offspring, germination, or seed dispersal; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

The primary constituent elements for the Alameda whipsnake are those habitat components that are essential for the primary biological needs of foraging, sheltering, breeding, maturation, and dispersal. The primary constituent elements are in areas that support scrub communities, including mixed chaparral, chamise-redshank chaparral, coastal scrub, and annual grassland and oak woodlands that lie adjacent to scrub habitats. In addition, the primary constituent elements for the Alameda whipsnake may be found in grasslands and various oak woodlands that are linked to scrub habitats by substantial rock outcrops or river corridors. Other habitat features that provide a source of cover for the whipsnake during dispersal or are near scrub habitats and contain habitat features (e.g., rock outcrops) that support adequate prey populations may also contain primary constituent elements for the Alameda whipsnake. Within these communities, Alameda whipsnakes require plant canopy covers that supply a suitable range of temperatures for the species' normal behavioral and physiological requirements (including but not limited to foraging, breeding, and maturation).

Openings in the plant canopy or scrub/grassland edge provide sunning and foraging areas. Corridors of plant cover and retreats (including rock outcrops) sufficient to provide for dispersal between areas of habitat, and plant community patches of sufficient size to prevent the deleterious effects of isolation (such as inbreeding or the loss of a subpopulation due to a catastrophic event) are also essential. Within these plant communities, specific habitat features needed by whipsnakes include, but are not limited to, small mammal burrows, rock outcrops, talus, and other forms of cover to provide temperature regulation, shelter from predators, egg laying sites, and winter hibernaculum. Many of these same elements are important in maintaining prey species. Adequate insect populations are necessary to sustain prey populations.

Criteria Used To Identify Critical Habitat

We considered several qualitative criteria in the selection and proposal of specific areas or units for Alameda whipsnake critical habitat. These criteria focused on designating units (1) throughout the geographic and elevation range of the species; (2) within various occupied plant communities, such as diablo sage scrub, coyote bush scrub, and chamise chaparral; (3) in areas of large, contiguous blocks of geographical areas occupied by the species; and (4) in areas that link contiguous blocks of geographical areas occupied by the species (i.e., linkage areas).

Methods

In developing critical habitat for the Alameda whipsnake, we used data on known Alameda whipsnake locations to initially identify important areas. Through the use of 1998 and 1999 aerial photos (1:12,000 scale) and 1994 digital orthophotos, we examined the extent of suitable habitat that was in the vicinity of known whipsnake locations. Critical habitat includes both suitable habitat and areas that link suitable habitat, as these links or corridors facilitate movement of individuals between habitat areas and are important for dispersal and gene flow (Beier and Noss 1998). We have determined seven separate units of critical habitat, five of which represent primary breeding, feeding, and sheltering areas, while the other two represent corridors (See attached figures). The range of these critical habitat units extends in the south from Wauhab Ridge in the Del Valle area to Cedar Mountain Ridge, in Santa Clara County; north to the northernmost extent of suitable habitat in Contra Costa County; west to the

westernmost extent of the inner Coastal Range; and in the east, to the easternmost extent of suitable habitat. We could not depend solely on federally owned lands for critical habitat designation as they are limited in geographic location, size, and habitat quality. In addition to federally owned lands, we propose to designate critical habitat on non-Federal public lands and privately owned lands, including California Department of Parks and Recreation lands, regional and local park lands, and water district lands.

Areas designated as critical habitat meet the definition of critical habitat under section 3 of the Act in that they are within the geographical areas occupied by the species, contain the physical and biological features that are essential to conservation of the species, and are in need of special management considerations or protection.

In determining areas that are essential for the survival and recovery of the species, we used the best scientific information available. This information included habitat suitability and species site-specific information. To date, only initial research has been done to identify and define specific habitat needs of Alameda whipsnakes, and no comprehensive surveys have been conducted to quantify their distribution or abundance. Limited and preliminary habitat assessment and whipsnake presence work has been conducted on the Department of Energy's Lawrence Livermore National Laboratory Site 300, East Bay Regional Park District's Tilden Park, San Francisco Public Utilities Commission's San Antonio Reservoir, Contra Costa Water District's Los Vaqueros Reservoir, East Bay Municipal Utility District's San Leandro Watershed and Siesta Valley, Pleasanton Ridge Conservation Bank, and Signature Properties' Bailey Ranch. Some small parcels have also been surveyed; however, these surveys were in conjunction with development and, in most cases, that habitat has been destroyed. -

We emphasized areas containing most of the verified Alameda whipsnake occurrences, especially recently identified locations. To maintain genetic and demographic interchange that will help maintain the viability of a regional metapopulation, we included corridor areas that allow movement between areas supporting Alameda whipsnakes. These corridors or connecting areas, while supporting some habitat suitable for foraging, shelter, breeding, and maturation, were primarily included to facilitate dispersal.

In identifying areas of critical habitat, we attempted to avoid developed areas

such as towns, intensive agricultural areas such as vineyards, and other lands unlikely to contribute to Alameda whipsnake conservation. Given the short period of time in which we were required to complete this rule and the lack of fine-scale mapping data, we were unable to map critical habitat in sufficient detail to exclude all such areas. Existing features and structures within the critical habitat boundary, such as buildings, roads, canals, railroads, large water bodies, and other features not currently containing or likely to develop these habitat components, will not contain one or more of the primary constituent elements. Federal actions limited to these areas, therefore, would not trigger a section 7 consultation, unless they affect the species and/or primary constituent elements in adjacent critical habitat. Two areas, the north and south corridors (unit 6 connecting units 1 and 2; and unit 7 connecting units 3 and 5), contain some urban development. These two corridors are extremely narrow, and, therefore, maintaining as much area within these corridors as possible to ensure the long-term connectivity between whipsnake populations is important. These two units may not provide sufficient habitat necessary to allow for breeding, and offer limited opportunities for foraging and sheltering. However, these areas provide for the vital function of dispersal among other critical habitat units.

We considered the existing status of lands in designating areas as critical habitat. Section 10(a) of the Act authorizes us to issue permits for the taking of listed species incidental to otherwise lawful activities. Incidental take permit applications must be supported by a habitat conservation plan (HCP) that identifies conservation measures that the permittee agrees to implement for the species to minimize and mitigate the impacts of the requested incidental take. Currently, no approved HCPs cover the Alameda whipsnake or its habitat. However, we expect critical habitat may be used as a tool to help identify areas within the range of the Alameda whipsnake that are most critical for the conservation of the species. Development of HCPs for such areas on non-Federal lands should not be precluded, as we consider HCPs to be one of the most important methods through which non-Federal landowners can resolve endangered species conflicts. We provide technical assistance and work closely with applicants throughout development of HCPs to help identify special management considerations for the

Alameda whipsnake. We intend for HCPs to provide a package of protection and management measures sufficient to address the conservation needs of the species.

Critical Habitat Designation

The approximate area of critical habitat by county and land ownership is shown in Table 1. Critical habitat includes Alameda whipsnake habitat throughout the species' range in the United States (*i.e.*, Contra Costa, Alameda, San Joaquin, and Santa Clara

Counties, California). Lands designated as critical habitat are under private, State, and Federal ownership, with Federal lands including lands managed by the Bureau of Land Management and the U.S. Department of Energy. Lands designated as critical habitat have been divided into seven critical habitat units.

TABLE 1. APPROXIMATE AREA ENCOMPASSING DESIGNATED CRITICAL HABITAT IN HECTARES (HA) (ACRES (AC)) BY COUNTY AND LAND OWNERSHIP

County	Federal land *	Local/State land	Private land	Total
Alameda	310 ha (767 ac)	26,440 ha (65,492 ac)	56,045 ha (138,824 ac)	82,795 ha (205,083 ac)
Contra Costa	32 ha (80 ac)	31,970 ha (79,189 ac)	35,245 ha (87,301 ac)	67,247 ha (166,570 ac)
San Joaquin	606 ha (1,500 ac)	525 ha (1,300 ac)	4,834 ha (11,975 ac)	5,965 ha (14,775 ac)
Santa Clara	NA	4,037 ha (10,000 ac)	4,106 ha (10,170 ac)	8,143 ha (20,170 ac)
Total	948 ha (2,347 ac)	62,972 ha (155,981 ac)	100,230 ha (248,270 ac)	164,150 ha (406,598 ac)

* Includes the Bureau of Land Management and Department of Energy land.

A brief description of each critical habitat unit and our reasons designating those areas as critical habitat for the Alameda whipsnake are given below:

Unit 1 Tilden-Briones Unit

Unit 1 encompasses approximately 16,074 ha (39,815 ac) within the Tilden-Briones unit and is the most northwestern unit of the five Alameda whipsnake metapopulations, and provides primary breeding, feeding, and sheltering habitat for the whipsnake. This entire unit occurs in Contra Costa County. This unit is bordered to the north by State Highway 4 and the cities of Pinole, Hercules, and Martinez; to the south by State Highway 24 and the City of Orinda Village; to the west by Interstate 80 and the cities of Berkeley, El Cerrito, and Richmond; and to the east by Interstate 680 and the City of Pleasant Hill. A substantial amount of public land exists within this unit, including East Bay Regional Park District's Tilden, Wildcat, and Briones Regional Parks and East Bay Municipal Utilities District watershed lands.

Unit 2 Oakland-Las Trampas Unit

Unit 2 encompasses approximately 21,869 ha (54,170 ac) south of the Tilden-Briones unit and north of the Hayward-Pleasanton Ridge unit, and provides primary breeding, feeding, and sheltering habitat for the Alameda whipsnake. This unit is split evenly between Alameda and Contra Costa Counties. This unit is surrounded to the north by State Highway 24 and the cities of Orinda, Moraga, and Lafayette; to the south by Interstate Highway 580 and the

City of Castro Valley; to the West by State Highway 13 and Interstate Highway 580 and the cities of Oakland and San Leandro; and to the east by Interstate Highway 680 and the cities of Danville, San Ramon, and Dublin. The Oakland-Las Trampas unit also contains substantial amounts of public land including East Bay Regional Park District's Redwood and Anthony Chabot Regional Parks, Las Trampas Regional Wilderness, and additional East Bay Municipal Utilities District watershed lands.

Unit 3 Hayward-Pleasanton Ridge Unit

Unit 3 encompasses approximately 12,923 ha (32,011 ac) south of the Oakland-Las Trampas unit and northwest of the Sunol-Cedar Mountain unit, and provides primary breeding, feeding, and sheltering habitat for the Alameda whipsnake. This unit occurs solely in Alameda County and is surrounded by Interstate Highway 580 to the north; Niles Canyon Road (State Highway 84) to the south; the cities of Hayward and Union City to the west, and Interstate Highway 680 and the City of Pleasanton to the east. This unit is bisected by Palomares Canyon Road, which runs from Interstate Highway 580 to Niles Canyon Road. Greater than 30 percent of this unit is in public ownership, including Garin, Dry Creek, and Pleasanton Ridge Regional Parks and other East Bay Regional Park District holdings. The privately owned Pleasanton Ridge Conservation Bank also occurs in the northeastern section of this unit.

Unit 4 Mount Diablo-Black Hills Unit

Unit 4 encompasses approximately 40,257 ha (99,717 ac) and completely encompasses Mount Diablo State Park and surrounding lands. The Mount Diablo-Black Hills Unit provides primary Alameda whipsnake breeding, feeding, and sheltering habitat. A majority of this unit is in Contra Costa County; however, the southern tip of this unit is in Alameda County. This unit is surrounded by State Highway 4 and the cities of Clayton, Pittsburgh and Antioch to the north; open grassland within Tassajara Valley just below the Alameda/Contra Costa County line to the south; the cities of Concord, Walnut Creek, and Danville to the west; and, to the east, by large expanses of grassland occurring west of State Highway 4, near the cities of Oakley and Brentwood. This unit contains large expanses of public lands, including two small Bureau of Land Management parcels; Mount Diablo State Park; Contra Costa Water District's Los Vaqueros Reservoir watershed; and Contra Loma, Black Diamond Mines, Morgan Territory, and Round Valley Regional Parks, and other East Bay Regional Park District holdings. Other public lands include lands owned by the City of Walnut Creek. Two large, privately owned gravel quarries occur within this unit.

Unit 5 Sunol-Cedar Mountain Unit

Unit 5 encompasses approximately 69,168 ha (171,328 ac) and is the largest and the southernmost of the seven critical habitat units. It provides primary breeding, feeding, and

sheltering habitat for the Alameda whipsnake. A majority of this unit is in Alameda County; however, it does also extend into western San Joaquin and northern Santa Clara Counties. The northern boundary of this unit runs parallel to State Highway 84 and Corral Hollow Road, south of the cities of Pleasanton and Livermore and Tesla Road. The southern boundary lies below Calaveras Reservoir and captures all of Wauhab and Cedar Ridges in Santa Clara County and stretches to the east, north of the Alameda-San Joaquin-Santa Clara-Stanislaus County intersection. The western boundary lies east of Interstate Highway 680 and the greater San Jose urban areas. The eastern boundary lies within San Joaquin County a few miles east of the Alameda County line. This unit includes East Bay Regional Park District's Sunol, Mission Peak, Ohlone, Camp Ohlone, and Del Valle complex, and State Water Project's Del Valle Reservoir watershed. In addition, the Department of Energy's Site 300 and California Department of Parks and Recreation's Carnegie Recreation Area occur within the unit.

Unit 6 Caldecott Tunnel Unit

Unit 6 encompasses approximately 2,185 ha (5,412 ac) and occurs between units 1 and 2 where State Highway 24 tunnels under the Berkeley Hills for approximately 1.2 kilometers (4,000 feet). It provides a connector between units 1 and 2. This unit is in Alameda and Contra Costa Counties. This unit encompasses lands owned by East Bay Municipal Utilities District, East Bay Regional Park District, Lawrence Berkeley Laboratory, the Cities of Berkeley and Oakland, and some private holdings.

Unit 7 Niles Canyon/Sunol Unit

Unit 7 encompasses approximately 1,673 ha (4,145 ac) and occurs between units 3 and 5 and lies south of State Highway 84 (Niles Canyon Road); north and west of Interstate 680; and east of the City of Fremont. It provides a connector between units 3 and 5. This unit is solely in Alameda County. This unit includes East Bay Regional Park District's Vargas Plateau and San Francisco Public Utilities watershed lands. Impediments to whipsnake movement between units 3 and 7 include Alameda Creek, a 0.3–0.6-meter (12–24-inch) high concrete barrier that lies south of Niles Canyon Road and north of Alameda Creek, railroad tracks that run along both sides of Alameda Creek, and heavy vehicular traffic along Niles Canyon Road.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out do not destroy or adversely modify critical habitat to the extent that the action appreciably diminishes the value of the critical habitat for the survival and recovery of the species. Individuals, organizations, States, local governments, and other non-Federal entities are affected by the designation of critical habitat only if their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding.

Section 7(a) of the Act requires Federal agencies, to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. If a species is listed or critical habitat is designated, section 7(a)(2) requires Federal agencies to ensure that actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Through this consultation, Federal agencies ensure that their actions do not destroy or adversely modify critical habitat.

When we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation with us on actions for which formal consultation has been completed if those actions may affect designated critical habitat.

Activities on Federal lands that may affect the Alameda whipsnake or its critical habitat will require section 7 consultation. Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the U.S. Army Corps of Engineers (Army Corps) under section 404 of the Clean Water Act, or some other Federal action, including funding (e.g., Federal Highway Administration, Federal Aviation Administration, or Federal Emergency Management Agency) will also continue to be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat and actions on non-Federal lands that are not federally funded or regulated do not require section 7 consultation.

Section 4(b)(8) of the Act requires us to describe in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may destroy or adversely modify such habitat or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat include those that alter the primary constituent elements to the extent that the value of critical habitat for both the survival and recovery of the Alameda whipsnake is appreciably diminished. We note that such activities may also jeopardize the continued existence of the species. Where they appreciably reduce the value of critical habitat, such activities may include, but are not limited to:

- (1) Removing, thinning, or destroying vegetation, whether by burning or mechanical, chemical, or other means (e.g., fuels management, bulldozing, herbicide application, overgrazing, etc.) that have not been approved by the Service, exclusive of routine clearing of fuel breaks around urban boundaries that were constructed before the listing of the whipsnake on December 5, 1997;
- (2) Water transfers, diversion, or impoundment, groundwater pumping, irrigation, or other activity that causes barriers or deterrents to dispersal, inundates habitat, or significantly

converts habitat (e.g., conversion to urban development, vineyards, landscaping);

(3) Recreational activities that significantly deter the use of suitable habitat areas by Alameda whipsnakes or alter habitat through associated maintenance activities (e.g., off-road vehicle parks, golf courses, and hiking, mountain biking, and horseback riding trails);

(4) Sale, exchange, or lease of Federal land containing suitable habitat that is likely to result in the habitat being destroyed or appreciably degraded; and

(5) Construction activities that destroy or appreciably degrade suitable habitat (e.g., urban development, building of recreational facilities such as off-road vehicle parks and golf courses, road building, drilling, mining, quarrying, and associated reclamation activities).

To properly portray the effects of critical habitat designation, we must first compare the section 7 requirements for actions that may affect critical habitat with the requirements for actions that may affect a listed species. Section 7 prohibits actions funded, authorized, or carried out by Federal agencies from jeopardizing the continued existence of a listed species or destroying or adversely modifying the listed species' critical habitat. Actions likely to "jeopardize the continued existence" of a species are those that would appreciably reduce the likelihood of the species' survival and recovery. Actions likely to "destroy or adversely modify" critical habitat are those that would appreciably reduce the value of critical habitat for the survival and recovery of the listed species.

Common to both definitions is an appreciable detrimental effect on both survival and recovery of a listed species. Given the similarity of these definitions, actions likely to destroy or adversely modify critical habitat would almost always result in jeopardy to the species concerned, particularly when the area of the proposed action is in the geographical areas occupied by the species concerned. In those cases, critical habitat provides little additional protection to a species, and the ramifications of its designation are few. However, if an area now occupied by the species were to become unoccupied in the future, critical habitat designation may provide additional protection than is available through a jeopardy analysis.

If you have questions regarding whether specific activities will constitute destruction or adverse modification of critical habitat, contact the Field Supervisor, Sacramento Fish and Wildlife Office (see **ADDRESSES** section).

Designation of critical habitat could affect Federal agency activities where they appreciably reduce the value of critical habitat. Some of these activities include, but are not limited to:

(1) Sale, exchange, or lease of lands owned by the Bureau of Land Management or the Department of Energy;

(2) Regulation of activities affecting waters of the United States by the Army Corps of Engineers under section 404 of the Clean Water Act;

(3) Regulation of water flows, water delivery, damming, diversion, and channelization by the Bureau of Reclamation and the Army Corps of Engineers;

(4) Regulation of grazing, recreation, or mining by the Bureau of Land Management;

(5) Funding and implementation of disaster relief projects by the Federal Emergency Management Agency;

(6) Funding and regulation of new road construction by the Federal Highways Administration;

(7) Clearing of vegetation by the Department of Energy;

(8) The cleanup of toxic waste and superfund sites under the Resource Conservation and Recovery Act (RCRA) and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) by the U.S. Environmental Protection Agency; and

Relationship to Incidental Take Permits Issued Under Section 10

There are no approved HCPs within the designated critical habitat area. However, future HCPs are probable.

We anticipate that future HCPs will include the Alameda whipsnake as a covered species and provide for its long-term conservation. We expect that HCPs undertaken by local jurisdictions (e.g., counties and cities) and other parties will identify, protect, and provide appropriate management for those specific lands within the boundaries of the plans that are essential for the long-term conservation of the species. Section 10(a)(1)(B) of the Act states that HCPs must meet issuance criteria, including minimizing and mitigating any take of the listed species covered by the permit to the maximum extent practicable, and that the taking must not appreciably reduce the likelihood of the survival and recovery of the species in the wild. We fully expect that our future analysis of HCPs and Section 10(a)(1)(B) permits under section 7 will show that covered activities carried out in accordance with the provisions of the HCPs and Section 10(a)(1)(B) permits will not result in the destruction or

adverse modification of critical habitat designated for the Alameda whipsnake.

In the event that future HCPs covering the Alameda whipsnake are developed within the boundaries of designated critical habitat, we will work with applicants to ensure that the HCPs provide for protection and management of habitat areas essential for the conservation of the Alameda whipsnake by either directing development and habitat modification to nonessential areas or appropriately modifying activities within essential habitat areas so that such activities will not adversely modify the primary constituent elements. The HCP development process provides an opportunity for more intensive data collection and analysis regarding the use of particular habitat areas by the Alameda whipsnake. The process also enables us to conduct detailed evaluations of the importance of such lands to the long-term survival of the species in the context of constructing a biologically configured system of interlinked habitat blocks.

We will provide technical assistance and work closely with applicants throughout the development of future HCPs to identify lands essential for the long-term conservation of the Alameda whipsnake and appropriate management for those lands. The take minimization and mitigation measures provided under these HCPs are expected to protect the essential habitat lands designated as critical habitat in this rule.

Summary of Comments and Recommendations

In the March 8, 2000, proposed rule, all interested parties were requested to submit comments and suggestions relative to the proposed designation of critical habitat for the Alameda whipsnake, including our economic analysis and the relationship of the designation to future HCP's (65 FR 12155). On May 15, 2000, we published a notice in the **Federal Register** (65 FR 30951) to reopen the comment period and announce a public hearing on the proposed determination. We published a notice of availability and request for comments on the draft economic analysis on June 23, 2000 (65 FR 39117), and subsequently, extended the comment periods for the proposed designation of critical habitat and the draft economic analysis to July 24, 2000. Comments received from March 8 through July 24, 2000, were entered into the administrative record.

All appropriate State and Federal agencies, county governments, scientific organizations, and other interested

parties were contacted and invited to comment. Legal notices inviting public comment were published in the Oakland Tribune. In addition, the following news releases were issued: (1) a March 8, 2000, news release announcing the proposed designation of critical habitat and soliciting public review and comment; (2) a May 15, 2000, news release announcing public hearings; and (3) a June 23, 2000, news release announcing the availability of the draft economic analysis to the public for review and comment and the extension of the comment period.

We held one public hearing on the proposed rule at San Ramon, Contra Costa County, California, on June 1, 2000. A notice of the hearing and its location was published in the **Federal Register** on May 15, 2000 (65 FR 30951). A total of 45 people provided verbal comments at the public hearing. Transcripts of this hearings are available for inspection at the Sacramento Fish and Wildlife Office (see **ADDRESSES** section).

We received a total of 45 oral and 551 written comments during the comment period. Of those oral comments, 14 supported critical habitat designation, 23 were opposed to designation, and 7 provided additional information but did not support or oppose the proposal. Of the written comments, 456 supported designation, 72 were opposed to it, and 23 provided additional information only, or were nonsubstantive or not relevant to the proposed designation. In total, oral and written comments were received from 5 Federal agencies, 5 State agencies, 11 local governments, and 532 private organizations, companies, or individuals.

All comments received were reviewed for substantive issues and new data regarding critical habitat and the Alameda whipsnake. Comments of a similar nature are grouped into 6 issues relating specifically to critical habitat. These are addressed in the following summary.

Issue 1: Biological and Physical Concerns

(1a) *Comment:* One commenter stated that not enough information is known about the total habitat requirements of the species to define critical habitat. One additional commenter stated that Unit 5 was far too large and not based on the best available scientific evidence. Several commenters questioned the scientific basis for designating specific areas as critical habitat and recommended excluding areas that did not provide all of the primary constituent elements for whipsnake

habitat and areas that reported negative Alameda whipsnake survey results.

Response: Section 4(b)(2) of the Act states "The Secretary shall designate critical habitat, and make revisions thereto, under subsection (a)(3) on the basis of the best scientific data available." Our recommendation is based on the available body of information on the biology and status of this subspecies, as well as the effects of land-use practices on its continued existence. We also utilized information on related species, including the chaparral whipsnake, if information on the Alameda whipsnake was lacking. No new information on the life history of the whipsnake was provided during the public comment periods. We agree that much remains to be learned about this species, and should credible, new information become available that contradicts the basis for this designation, we shall reevaluate our analysis and, if appropriate, propose to modify this critical habitat designation. We have considered the best scientific information available at this time, as required by the Act.

In selecting areas to be included in the designation, we identified the historic range of the whipsnake, as well as important components related to survival and recovery, including areas that provide sufficient breeding, feeding, and sheltering, as well as providing adequate movement corridors to maintain genetic connectivity and adequate space for population fluctuations. Because of the nature of the whipsnake (fast, secretive, mobile, burrow dwelling, with periods of hibernation) negative whipsnake survey results may not provide sufficient evidence that the site is not used by Alameda whipsnakes during some point in their life cycle. In addition, whipsnake surveys do not characterize whether the site provides one or all of the primary constituent elements needed by the whipsnake for survival and recovery. Because the primary constituent elements are linked to various stages of the whipsnake's life history (breeding, dispersal) or to certain physiological requirements (temperature regulation for foraging), and the whipsnake would not necessarily be engaged in all these activities concurrently, not all elements need be present for the site to be considered for designation.

(1b) *Comment:* A few commenters stated that the Service neglected to include species information and habitat data that was developed by the Alameda-Contra Costa Biodiversity Working Group.

Service Response: The Service reviewed the information prepared by the Alameda-Contra Costa Biodiversity Working Group. The working group used the Alameda whipsnake as an umbrella species for chaparral and coastal scrub habitats. The working group did not define any other habitats, including grasslands, woodlands, or riparian areas, as potential whipsnake habitat. These habitat types were mapped using false-color infrared color aerial photographs and subsequently mapped on 7.5-minute orthophotographs. As explained under the "Methods" section above, the Service used a similar approach for mapping critical habitat for the Alameda whipsnake. However, in addition to chaparral and coastal scrub habitats, the Service defined whipsnake habitat to include grassland, oak woodland, and riparian habitats that lie adjacent to and provide corridors between areas of scrub and chaparral habitat. Native grassland, oak woodland, and riparian habitats that lie adjacent to chaparral and scrub habitats provide important feeding, breeding, and sheltering sites. In addition, these habitat types facilitate movement of whipsnakes between scrub and chaparral habitat areas to ensure adequate dispersal and gene flow between subpopulations.

(1c) *Comment:* Many local fire prevention agencies commented that ongoing fuel reduction and modification that occurred before the Alameda whipsnake was formally listed on December 5, 1997, should be exempt from this rulemaking, including the Lafayette Reservoir watershed. In addition, these agencies requested that fire prevention techniques such as prescribed burning and ongoing vegetative clearing should be permitted when there is a threat to human health and property. Mount Diablo State Park specifically requested that the designation of critical habitat not preclude the use of prescribed fire to improve the biological health of the vegetative community and reduce the risk of a catastrophic wildfire.

Service Response: As stated in the "Section 7 Consultation" section above, routine clearing of fuel breaks around urban boundaries that were constructed before the listing of the whipsnake on December 5, 1997, including the Layette Reservoir Watershed, would not be affected by this designation. In addition, the designation of critical habitat for the Alameda whipsnake will have no effect on activities that occur on private property unless the activity is federally funded or requires a Federal permit. For projects that receive Federal (i.e. Federal Emergency Management Agency

(FEMA)) funding, the Service is actively working with the Federal agency and the local representative to ensure that untimely delays in project implementation do not occur. The Service agrees that Mount Diablo State Park's concerns regarding their prescribed burn program are significant. The designation of critical habitat will not require any additional restrictions for carrying out prescribed burn projects above and beyond the restrictions currently in effect due to the listing of the Alameda whipsnake as a threatened species. Furthermore, the Service will assist Mount Diablo State Park staff with the development of a Habitat Conservation Plan, or any other measures required so the Park can continue vegetation enhancement measures such as prescribed burn projects.

(1d) *Comment:* Several commenters stated that the maps supplied with the proposed rule designating critical habitat did not exclude existing infrastructure including housing developments, reservoirs, and other manmade features that are not suitable habitat for the Alameda whipsnake.

Service Response: As stated in the 'Methods' section above, given the short period of time in which we were required to complete this rule, and the lack of fine-scale mapping data, we were unable to map critical habitat in sufficient detail to exclude all such areas. Existing features and structures within the critical habitat boundary, such as buildings, roads, canals, railroads, large water bodies, and other features not currently containing or likely to develop these habitat components, will not contain one or more of the primary constituent elements.

(1e) *Comment:* Several commenters stated that activities such as recreational biking, hiking, horseback riding, and off-road highway vehicle use were unfairly placed in the same category of impacts with more significant threats to the species including urban development and golf course construction and use.

Service Response: In the proposed rule and here in the final rule, we list activities that could adversely modify critical habitat without placing specific emphasis on the relative contribution of any one activity. The use of existing trails for recreational hiking, biking, and horseback riding do not pose the same level of threats to the species as the construction and use of new trails that modify critical habitat for the whipsnake. The specific threats that result from the construction and use of new trails are likely unique to each

critical habitat unit and are best addressed in recovery plans, management plans, and section 7 consultations.

(1f) *Comment:* Many commenters were concerned about how designation of critical habitat would affect grazing and recreation activities including biking, hiking, and horseback riding.

Service Response: Designation of critical habitat does not prescribe specific management actions, but does identify areas that are in need of special management considerations. In regards to grazing, the Service does not foresee any change in the ability of private landowners to graze their property. In addition, we anticipate that many activities, including grazing and recreational trail use, presently occurring on critical habitat areas can be managed so as to be compatible with the whipsnake's needs.

(1g) *Comment:* One commenter asked whether existing utility features and the maintenance of these features are covered under the definition of critical habitat for the Alameda whipsnake.

Service Response: Yes, however, the designation of critical habitat will not require any additional restrictions for carrying out maintenance projects above and beyond the restrictions currently in effect due to the listing of the Alameda whipsnake as a threatened species. Furthermore, the Service will assist utility companies with the development of a Habitat Conservation Plan or any other measures required so that maintenance projects can continue.

(1h) *Comment:* One commenter was concerned that, given the extensive amount of land designated as critical habitat, the Service might not require surveys for whipsnake presence, eliminating a source for locality information.

Service Response: The Service does not foresee a decrease in the number of future Alameda whipsnake surveys. Future Alameda whipsnake surveys may be conducted to determine the relative abundance of Alameda whipsnakes at specific sites and to determine appropriate minimization measures. In addition, the draft recovery plan will identify the need to conduct surveys in association with a variety of recovery tasks.

(1i) *Comment:* A few commenters stated that the Service incorrectly proposed critical habitat in the eastern section of unit 5 because there are no verified Alameda whipsnake records in the area. Additional commenters stated there are no known Alameda whipsnake occurrences throughout unit 5. Also, one commenter stated the Service should not designate critical habitat in

the western section of unit 5 because of the lack of information regarding the zones of intergradation between federally-listed Alameda whipsnake and the non-listed chaparral whipsnake.

Service Response: A live-trapping survey for the Alameda whipsnake was conducted within the eastern section of unit 5 on the Department of Energy's Lawrence Livermore Lab's Site 300 in 1998. During that survey, 14 individual California whipsnakes were captured, one of which had more taxonomic characteristics of the Alameda whipsnake than the chaparral whipsnake. The Service also has records of pure Alameda whipsnake occurrences that occur throughout unit 5, including two occurrences that lie just north of Calaveras Reservoir, within 10 miles of the western boundary of unit 5.

(1j) *Comment:* One of the peer review commenters stated that zone of intergradation between the Alameda whipsnake and the chaparral whipsnake occurs in the Del Puerto Canyon and San Antonio Valley areas of San Joaquin, Santa Clara, and Stanislaus Counties. He suggested that critical habitat be extended south and southeast of Unit 5 to encompass additional areas within western San Joaquin and Stanislaus Counties and northern Santa Clara County to capture this zone of intergradation.

Service Response: The Service will investigate these areas of intergradation to determine their extent and their relationship to the Alameda whipsnake population that occurs in Unit 5. Based on this investigation, we will decide whether critical habitat in unit 5 should be extended further south and southeast to include the Del Puerto Canyon and San Antonio Valley areas.

(1k) *Comment:* One commenter claimed that the proposed rule is internally inconsistent as it states that critical habitat was proposed on land that is occupied by the Alameda whipsnake, while it appears that unoccupied habitat has been proposed for designation.

Service Response: A range-wide survey has not been conducted for this species. As described in 'Methods' above, we used data on known Alameda whipsnake locations to initially identify important areas. We have also made the reasonable assumption that areas adjacent to these locations are also within the geographical area occupied by the species based on the suitability of the habitat. In addition, knowledge of the species biology and the need for genetic connectivity to assure species persistence directs the inclusion of movement corridors where possible.

The Service, therefore, maintains that all seven critical habitat units are geographical areas occupied by the Alameda whipsnake.

Issue 2: General Selection of Designated Critical Habitat Areas

(2a) *Comment:* Several commenters stated that private lands should be excluded from critical habitat designation. These commenters stated that the publication of maps with threatened or endangered species locations overlaid upon private land could subject private property owners to increased exposure to litigation, liability, trespass, or other activities that could interfere with privacy, and with the lawful beneficial uses of the property.

Service Response: Section 4(b)(2) of the Act states "The Secretary shall designate critical habitat, and make revisions thereto, under subsection (a)(3) on the basis of the best scientific data available and after taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat." The Act does not require nor suggest that private lands should be excluded from designation, unless we find that the economic or other relevant impacts outweigh the benefit of critical habitat designation.

(2b) *Comment:* Several commenters recommended excluding from designation as critical habitat areas where there were plans being formulated to construct urban improvements within or in proximity to the areas proposed as critical habitat.

Service Response: We did not exclude any areas because of speculative or proposed developments. We are available to work with project proponents to develop project alternatives that will avoid and minimize adverse effects to whipsnakes, and not result in destruction or adverse modification of critical habitat.

(2c) *Comment:* One commenter stated that, given the fact that 60 percent of the known range of the Alameda whipsnake occurs in public ownership, the loss of the 40 percent that is held in private ownership would not lead to the demise of the snake. Therefore, private lands should not be included as critical habitat.

Service Response: The range of the Alameda whipsnake has been fragmented by urban development and associated roadway construction. What remains are five distinct populations that continue to suffer significant habitat loss due to urban encroachment and related activities. Public and private lands are randomly distributed

throughout the current range of the species. The loss of all remaining private lands that provide suitable habitat for the whipsnake would further fragment the five whipsnake populations and result in significant losses of breeding, feeding, and sheltering habitats, as well as the connectivity corridors. The Service believes that both public and private lands are essential to the survival and recovery of the species. The critical habitat designation, therefore, includes both private and public lands.

Issue 3: Comments on Selection of Specific Sites

(3a) *Comment:* Several commenters expressed concern with the lack of connectivity between individual units, especially between units 2 and 3.

Service Response: The Service agrees that there is currently limited potential for movement between these two units. However, through recovery efforts, the Service proposes to research ways to promote connectivity and to determine the level of connectivity needed to prevent genetic bottlenecks. The Alameda whipsnake populations that occupy units 2 and 3 are the most threatened with extinction due to their small sizes and the continued encroachment of urban development that is further fragmenting these populations and directly removing suitable whipsnake habitat. The Service agrees with the commenters that all future opportunities for reconnecting these two populations with each other and with other whipsnake populations should be explored to ensure recovery of the species. For example, there may be opportunities for reestablishing connectivity between units 2 and 3 associated with any alterations of Interstate 580.

(3b) *Comment:* A few commenters wanted clarification as to whether their properties were included in the proposed critical habitat designation.

Service Response: Service staff discussed with the landowners their properties' relationship to the critical habitat designation.

(3c) *Comment:* One commenter was concerned that the designation of critical habitat would prevent the extraction and processing of aggregate materials at four separate facilities that occur within the critical habitat boundaries.

Service Response: The designation of critical habitat has no effect on non-Federal actions taken on private land, even if the private land is within the mapped boundary of designated critical habitat. The listing of the Alameda whipsnake as threatened, however, does

provide the whipsnake the protection afforded by the Act on both public and private lands. Critical habitat has possible effects on activities by private landowners only if the activity involves Federal funding, a Federal permit, or other Federal action. If such a Federal nexus exists, we will work with the landowner and the appropriate Federal agency to develop a project that can be completed without jeopardizing the species or destroying or adversely modifying critical habitat. In this case, reclamation activities upon facilities closure may require Federal funding, a Federal permit, or other Federal action.

(3d) Several commenters pointed out errors in locations or descriptions in the proposed rule.

Service Response: Corrections have been made in the final rule to reflect these comments, where appropriate.

Issue 4: Legal and Procedural Comments

(4a) *Comment:* Several commenters stated that the proposed critical habitat designation is based on insufficient data and the Service should withdraw its proposal given the limited amount of time it had to adequately map whipsnake critical habitat.

Service Response: As explained in 1(a) above, Section 4(b)(2) of the Act states "The Secretary shall designate critical habitat, and make revisions thereto, under subsection (a)(3) on the basis of the best scientific data available . . .". At this time, the Service has used the best available data to formulate the designation.

(4b) *Comment:* Several commenters stated the designation of critical habitat constitutes a major Federal action significantly affecting the quality of the human environment. An Environmental Impact Statement (EIS) should be prepared.

Service Response: We have determined that Environmental Assessments (EAs) and EISs, as defined under the authority of the National Environmental Policy Act of 1969 (NEPA), need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** in October 1983 (48 FR 49244).

(4c) *Comment:* Several commenters stated the maps and descriptions provided were vague and violate the Act.

Service Response: This final rule contains the required legal descriptions of areas designated as critical habitat. If additional clarification is necessary, contact the Sacramento Fish and Wildlife Office (see **ADDRESSES** section). As described under the "Critical Habitat

Designation" section above, we identified specific areas referenced by specific legal description, roads, waterways, and other landmarks, which are found on standard topographic maps.

(4d) *Comment:* The critical habitat proposal represents virtually all suitable or potentially suitable habitat within the species' historic range. The Act prohibits such broad designation.

Service Response: Section 3(5)(C) of the Act states that, except in those circumstances determined by the Secretary, critical habitat shall not include the entire geographical areas which can be occupied by an endangered or threatened species. The Alameda whipsnake population has been fragmented into five distinct populations from urban development and associated highway construction. The loss of any one of these five populations could lead to the extinction of the entire species. Therefore, we have determined that the areas designated are essential to conserve this species.

(4e) *Comment:* Several commenters asked whether projects that have obtained a biological opinion pursuant to section 7 of the Act would be required to reinitiate consultation to address the designation of critical habitat.

Service Response: For all projects that have completed section 7 consultation where that consultation did not address potential destruction or adverse modification of critical habitat for the Alameda whipsnake, and have not been constructed, section 7 consultation must be reinitiated. We expect that projects that do not jeopardize the continued existence of the Alameda whipsnake are not likely to destroy or adversely modify its critical habitat.

(4f) *Comment:* Several commenters have asked what specifically constitutes a federal nexus on private land.

Service response: A Federal nexus is invoked when a Federal agency is funding, permitting, or in some way authorizing a project. For the purposes of this rulemaking, a Federal nexus that was invoked prior to the rulemaking for a project that has been constructed or completed, would not require a section 7 consultation under the Act. If the project has not to date received Federal funding, a Federal permit, or Federal authorization, but will require such in the future, and the project might destroy or adversely modify critical habitat, the action would require a section 7 consultation. In addition, projects that have been federally funded, permitted, or authorized, but have not been fully constructed would require a section 7

consultation if the project may destroy or adversely modify critical habitat.

(4g) *Comment:* Several commenters asked whether it is prudent to designate private land as critical habitat when there is no Federal nexus.

Service Response: As stated under the "Critical Habitat" section above, designation of critical habitat can help focus conservation activities for a listed species by identifying areas that contain the physical and biological features that are essential for conservation of that species. Designation of critical habitat alerts the public as well as land-management agencies to the importance of these areas.

(4h) *Comment:* One commenter stated that the Service lacks the authority under the Commerce Clause of the Constitution to designate critical habitat on State and private land for a species that has no commercial utility.

Service Response: The Service maintains that it does have the authority to designate critical habitat for the Alameda whipsnake on private and State lands pursuant to the Act. Several court cases have confirmed this authority (e.g., *Nat. Ass'n of Home Builders of the U.S. v. Babbitt*, 130 F.3d 1041 (D.C. Cir. 1997)).

(4i) *Comment:* Several commenters stated that critical habitat should not be designated until a recovery plan is completed.

Service Response: Although having a recovery plan in place is extremely helpful in identifying areas as critical habitat, the Act does not require a recovery plan to be prepared prior to such designation of critical habitat. Section 4(a)(3) of the Act specifically requires that critical habitat be designated at the time a species is listed, or within 1 year if not determinable at listing. Once a recovery plan is finalized, we may revise the critical habitat described in this final rule, if appropriate, to reflect the goals and recovery strategies of the recovery plan.

Issue 5: The incorporation of Habitat Conservation Plans (HCPs) Into the Critical Habitat Designation

Comment: In response to the Service's request that the public comment on critical habitat designation relative to future HCP's, 2 commenters support the approach that critical habitat be removed entirely from within the boundaries of HCP's automatically upon the issuance of the incidental take permit. One commenter stated that critical habitat should be retained within the boundaries of approved HCP's.

Service Response: The Service has considered several different approaches

regarding the issuance of HCP's within the critical habitat boundary. Although there are no authorized or completed HCP's that occur within the boundary of Alameda whipsnake critical habitat designation, future HCPs are probable. If, consistent with available funding and program priorities, we elect to revise this designation to reflect future HCPs, our Solicitors have advised that modifying the designation will require a subsequent rulemaking.

Issue 6: Economic Issues

(6a) *Comment:* Many commenters expressed concern that the draft economic analysis failed to quantify the effects of proposed critical habitat designation.

Service Response: Given the circumstances surrounding the preparation of the draft economic analysis, we were only able to identify the types of impacts likely to occur regarding proposed critical habitat designation. Impacts we identified that could result from critical habitat designation include new section 7 consultations, re-initiation of consultations, and perhaps some prolongment of ongoing consultations to address critical habitat concerns, as required under section 7 of the Act. In some of these cases, it is possible that we might suggest reasonable and prudent alternatives to the proposed activity that triggered the consultation, which would also be an impact. Also associated with consultations is the length of time required to carry out consultations, which may result in opportunity costs associated with project delays.

In the case of proposed critical habitat for the Alameda whipsnake, however, we have only designated habitat that is within the geographical areas occupied by the whipsnake. As a result, few of these impacts are likely to occur because Federal agencies are already required to consult with us on activities taking place on these lands that have the potential to may adversely affect the whipsnake. We believe that the only impacts to landowners whose property lies within critical habitat boundaries are due to reinitiation of completed consultations for projects not yet completed, and the designations temporary affect on real estate values. While the Act requires agencies to consult with us on activities that adversely modify critical habitat, we do not believe that within proposed critical habitat for the Alameda whipsnake there are likely to be any actions of concern that adversely modify critical habitat without also jeopardizing the whipsnake.

We also recognize that, in some instances, the designation of critical habitat could affect real estate market value, because participants may incorrectly perceive that land within critical habitat designation to be subject to additional constraints. However, we believe that this affect will be temporary.

(6b) *Comment:* Some commenters were concerned that, while we discussed impacts that are more appropriately attributable to the listing of the Alameda whipsnake than to the proposed designation of critical habitat, we did not provide quantified estimates associated with the listing (62 FR 64306).

Service Response: We are prohibited from considering economic impacts when determining whether or not a species should be added to the list of Federally protected species. As a result, we have not estimated these impacts in the past, nor were we able to do so for the draft economic analysis on proposed critical habitat.

(6c) *Comment:* Several commenters voiced concern that they were not directly contacted for their opinions on the economic impacts of critical habitat designation.

Service Response: It was not feasible to contact every potential stakeholder in order for us to develop a draft economic analysis. We believe that we were able to understand the issues of concern to the local community based on public comments submitted on the proposed rule, on transcripts from public hearings, and from detailed discussions with Service representatives. To clarify issues, we did contact representatives from other Federal, State, and local government agencies, as well as some landowners.

In regard to consultations, the Act and its implementing regulations only requires Federal agencies to consult with us on activities that they fund, authorize, or carry out that may affect a listed species or adversely modify critical habitat. As a result, only Federal agency representatives are in a position to characterize whether or not any additional or re-initiated consultations might occur as a result of critical habitat designation. The Act prohibits anyone, including private landowners, from take of a listed species without Service authorization; however, the impacts associated with this requirement are attributable to the listing of the species.

Based on what we have learned and because critical habitat was designated only in areas occupied by the whipsnake, we believe that the only impacts to landowners whose property lies within critical habitat boundaries

are due to reinitiation of completed consultations for projects not yet completed, and the designations temporary affect on real estate values.

(6d) *Comment:* Several commenters voiced concern that, while their property was within proposed critical habitat boundaries, they have never found any whipsnakes on their property, and that in many cases their property did not contain the physical elements described in the proposed rule that are required by the whipsnake.

Service Response: We recognize that not all parcels within proposed critical habitat designation will contain the primary constituent elements needed by the whipsnake. Given the short period of time in which we were required to complete this proposed rule, and the lack of fine scale mapping data, we were unable to map critical habitat in sufficient detail to exclude all such areas. Within the proposed critical habitat boundaries, only areas that contain or are likely to develop those habitat components essential for the primary biological needs of the Alameda whipsnake may be subject to section 7 consultation should a Federal nexus exist in those areas. Activities that do not involve a Federal nexus would not require section 7 consultation, even if primary constituent elements are present.

(6e) *Comment:* Some commenters felt that the economic analysis is flawed because it is based on the premise that the Service has proposed designating only occupied habitat as critical habitat.

Service Response: The determination of whether or not proposed critical habitat is occupied by the whipsnake lies beyond the scope of an economic analysis. See also our response to issue 1(k), above.

(6f) *Comment:* Critical habitat designation is so broad that some landowners will be forced to survey for whipsnake presence under Federal and State environmental laws when undertaking a project, even though some sites within designated critical habitat do not contain whipsnakes or the primary constituent elements needed by whipsnakes to occupy an area. In effect, the Service has shifted the economic burden of determining what lands are occupied by the Alameda whipsnake within the designated units to landowners within these units, irrespective of whether the lands in question have ever been occupied by the snake.

Service Response: We have determined that the geographical areas that have been identified as critical habitat are occupied by the Alameda whipsnake. We have attempted to

exclude developed lands from proposed critical habitat designation when possible. In selecting areas of proposed critical habitat, we attempted to avoid developed areas such as towns, intensive agricultural areas such as vineyards, and other lands unlikely to contribute to the Alameda whipsnake conservation. While we have been unable to avoid all such areas, actions limited to these areas will not require consultations.

(6g) *Comment:* Many landowners expressed concern about how critical habitat designation may affect their particular properties and what they would and would not be allowed to do in the future because of the designation. Some of these landowners expressed concerns that they would need to seek incidental take authorization from the Service for every type of action taken on their property.

Service Response: While the Service is sensitive to the concerns of individuals concerning their property rights, we believe that the designation of critical habitat, for the Alameda whipsnake does not impose any additional conditions on property owners within those areas designated as critical habitat, beyond those imposed due to the Alameda whipsnake being a Federally protected species. All landowners are responsible to ensure that their actions do not result in the unauthorized take of a listed species, and all Federal agencies are responsible to ensure that the actions they fund, permit, or carry out do not result in jeopardizing the continued existence of a listed species, regardless of where the activity takes place. We will work with any covered landowners to identify actions that would or would not likely result in take of Alameda whipsnakes, to identify measures to conserve the whipsnake, and, where appropriate, to develop HCPs and associated permits under section 10 of the Act to authorize incidental take of the Alameda whipsnake.

(6h) *Comment:* The draft economic analysis failed to adequately estimate the potential economic impacts to agricultural lands and how these effects would ripple through the local economy.

Service Response: In conducting our economic analysis, we acknowledged that we had received incomplete information from the agricultural industry and awaited their comments. We received several comments that suggested that we failed to adequately consider effects to the agricultural community of designating critical habitat. We have read through these comments but have concluded that the

commenters have failed to adequately explain the rationale for why they believe critical habitat designation impacts their industry.

In designated critical habitat, landowners, if subject to a Federal nexus, will have to consult with us, through the representative Federal action agency, concerning any actions that may adversely affect the Alameda whipsnake or adversely modify its critical habitat. However, because we have only designated geographical areas that are occupied by the snake, landowners and associated action agencies would still be required to consult with us on such activities regardless of critical habitat designation.

As a result, contrary to one commenter's suggestion, we chose not to consider agriculture multiplier effects in performing our economic analysis because our primary interest is in determining whether or not critical habitat designation could affect landowner activities. Because of how critical habitat was defined and the current restrictions on jeopardizing an endangered or threatened species, we have determined that we are not adding any additional burden to the industry and as a result we do not find it necessary to fully explore the importance of the agriculture industry, to the local economy in the economic analysis concerning proposed critical habitat for the Alameda whipsnake.

(6i) *Comment:* The draft economic analysis failed to adequately estimate the potential economic impacts to landowners regarding fire management practices.

Service Response: The economic analysis does address fire/fuel management concerns that were voiced by some of the stakeholders. It raises the concern that these programs are subject to a clear Federal nexus because the practice relies in part on funding from the Federal Emergency Management Agency (FEMA). However, because we have only designated geographical areas by the species as critical habitat for the whipsnake, this activity is subject to no further scrutiny by us than it normally would be because the whipsnake is a federally protected species and is protected both from any actions resulting in an unlawful take and from Federal actions that could result in jeopardizing the species.

(6j) *Comment:* Some landowners expressed concern that, because their property was located within critical habitat boundaries, they would be subject to additional constraints under the California Environmental Quality Act (CEQA).

Service Response: To the extent that the CEQA places additional constraints on property owners within designated critical habitat such constraints would be a direct effect of CEQA and not a direct result of the designation of critical habitat for the Alameda whipsnake.

(6k) *Comment:* Some commenters agreed with the statement in the economic analysis that the designation of critical habitat could have some effect on property values.

Service Response: We acknowledged in our economic analysis that the designation of critical habitat could have some effect on property values. Most of this effect, we believe, is short-term and occurs as a result of the market's uncertainty as to what critical habitat designation requires.

(6l) *Comment:* A commenter questioned whether habitat designation would provide the following benefits:

(1) Preservation of a resource; (2) existence value; (3) enhancement of scenic beauty; and (4) bequest value.

Service Response: In some instances the designation of critical habitat may result in additional benefits associated with the preservation of the species and its associated habitat. Economists have traditionally recognized that such benefits can be broken down into the above categories. However, in the particular case of the designation of critical habitat for the Alameda whipsnake, these additional benefits are unlikely to occur because the designation of critical habitat does not provide any additional protection to the species beyond that provided by the listing of the whipsnake as a Federally protected species.

(6m) *Comment:* The San Francisco Public Utilities Commission believes that designation of critical habitat will lead to additional costs as they will need to determine presence/absence on new project areas.

Service Response: The Service does not anticipate any additional requirements beyond those required upon listing the Alameda whipsnake as threatened.

Summary of Changes From the Proposed Rule

Based on comments we received on the proposed rule, we made minor modifications to the critical habitat boundary to more adequately reflect the existence of urban development occurring along the periphery of the critical habitat boundary. Specifically, we made minor changes to the southern boundary of unit 4 to exclude two existing ranchettes that occur in the northern section of Tassajara Valley. In

addition, we made minor adjustments to the critical habitat boundary in the northwestern section of unit 6 to exclude existing facilities that are owned by Lawrence Berkeley National Laboratory.

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial data available and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species.

The economic effects already caused by the listing of the Alameda whipsnake as threatened is the baseline upon which we analyze the economic effects of critical habitat. The critical habitat economic analysis examined the incremental economic and conservation effects of designating a particular area. The economic effects of a designation were evaluated by measuring changes in national, regional, or local indicators in the area considered for designation. We prepared an analysis of the economic effects of the proposed Alameda whipsnake critical habitat designation in draft form and made the draft available for public review (June 23, 2000; 65 FR 39117). We concluded in the final analysis, which included review and incorporation of public comments, that no economic impacts are expected from critical habitat designation above and beyond that already imposed by listing the Alameda whipsnake. Potential economic effects of critical habitat designation are limited to impacts on activities funded, authorized, or carried out by a Federal agency. These activities would be subject to section 7 consultation if they may affect critical habitat. However, activities that may affect an area considered for critical habitat usually affect listed species, and would thus already be subject to section 7 consultation. Also, changes or minimizing measures that might increase the cost of the project would be imposed only as a result of critical habitat if the project would adversely modify or destroy that critical habitat. In most cases, a project that would adversely modify or destroy critical habitat would also likely jeopardize the continued existence of the species. In such a case, reasonable and prudent alternatives to avoid jeopardizing the

species should also avoid adverse modification of critical habitat. The areas designated as critical habitat are considered occupied by the Alameda whipsnake. Since the habitat is in geographical areas occupied by the species, Federal agencies are already required to consult with us due to the listing of the species. Thus, regulatory burdens or additional cost due to the critical habitat designation for the whipsnake are not likely to exceed those already resulting from the species' listing.

A copy of the economic analysis is included in our administrative record and may be obtained by contacting the Sacramento Fish and Wildlife Office (see **ADDRESSES** section).

Required Determinations

Regulatory Planning and Review

Under Executive Order 12866, this document is a significant rule and has been reviewed by the Office of Management and Budget (OMB), under Executive Order 12866.

(a) This rule will not have an annual economic effect of \$100 million or more or adversely affect an economic sector, productivity, jobs, the environment, or other units of government.

The areas designated as critical habitat are currently occupied by the

Alameda whipsnake. Under the Endangered Species Act, critical habitat may not be destroyed or adversely modified by a Federal agency action; the Act does not impose any restrictions on non-Federal persons unless they are conducting activities funded or otherwise sponsored or permitted by a Federal agency (see Table 2 below). Section 7 requires Federal agencies to ensure that they do not jeopardize the continued existence of the species. Based upon our experience with the species and its needs, we conclude that any Federal action or authorized action that could potentially cause an adverse modification of critical habitat would currently be considered as "jeopardy" under the Act. Accordingly, the designation of currently occupied areas as critical habitat does not have any incremental impacts on what actions may or may not be conducted by Federal agencies or non-Federal persons that receive Federal authorization or funding. Non-Federal persons that do not have a Federal "sponsorship" of their actions are not restricted by the designation of critical habitat (however, they continue to be bound by the provisions of the Act concerning "take" of the species).

(b) This rule will not create inconsistencies with other agencies'

actions. As discussed above, Federal agencies have been required to ensure that their actions do not jeopardize the continued existence of the Alameda whipsnake since the listing in 1997. The prohibition against adverse modification of critical habitat is not expected to impose any additional restrictions to those that currently exist because all designated critical habitat is occupied. Because of the potential for impacts on other Federal agencies activities, we will continue to review this action for any inconsistencies with other Federal agency actions.

(c) This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Federal agencies are currently required to ensure that their activities do not jeopardize the continued existence of the species and, as discussed above, we do not anticipate that the adverse modification prohibition (from critical habitat designation) will have any incremental effects.

(d) This rule will not raise novel legal or policy issues. The rule follows the requirements for determining critical habitat contained in the Endangered Species Act.

TABLE 2.—IMPACTS OF ALAMEDA WHIPSNAKE LISTING AND CRITICAL HABITAT DESIGNATION

Categories of activities	Activities potentially affected by Species Listing Only ¹	Additional Activities potentially affected by critical habitat designation ²
Federal Activities Potential Affected ³ .	Activities such as removing, thinning, or destroying Alameda whipsnake habitat (as defined in the primary constituent elements discussion), whether by burning or mechanical, chemical, or other means (e.g. fuels management, bulldozing, herbicide application, grazing, etc.); water transfers, diversion, or impoundment, groundwater pumping, irrigation, or other activity that causes barriers or deterrents to dispersal, inundates habitat, or significantly converts habitat (e.g., conversion to urban development, vineyards, landscaping); recreational activities that significantly deter the use of suitable habitat areas by Alameda whipsnakes or alter habitat through associated maintenance activities (e.g., off-road vehicle parks, golf courses, and hiking, mountain biking, and horseback riding trails); sale, exchange, or lease of Federal land that contains suitable habitat that is likely to result in the habitat being destroyed or appreciably degraded; and construction activities that destroy or appreciably degrade suitable habitat (e.g., urban development, building of recreational facilities such as off-road vehicle parks and golf courses, road building, drilling, mining, quarrying and associated reclamation activities) that the Federal Government carries out.	None

TABLE 2.—IMPACTS OF ALAMEDA WHIPSNAKE LISTING AND CRITICAL HABITAT DESIGNATION—Continued

Categories of activities	Activities potentially affected by Species Listing Only ¹	Additional Activities potentially affected by critical habitat designation ²
Private and other non-Federal Activities Potentially Affected ⁴ .	Activities such as removing, thinning, or destroying Alameda whipsnake habitat (as defined in the primary constituent elements discussion), whether by burning or mechanical, chemical, or other means (e.g., fuels management, bulldozing, herbicide application, grazing, etc.); water transfers, diversion, or impoundment, groundwater pumping, irrigation, or other activity that causes barriers or deterrents to dispersal, inundates habitat, or significantly converts habitat (e.g., conversion to urban development, vineyards, landscaping, etc.); recreational activities that significantly deter the use of suitable habitat areas by Alameda whipsnakes or alter habitat through associated maintenance activities (e.g., off-road vehicle parks, golf courses, and hiking, mountain biking, and horseback riding trails); and construction activities that destroy or appreciably degrade suitable habitat (e.g., urban development, building of recreational facilities such as off-road vehicle parks and golf courses, road building, drilling, mining, quarrying and associated reclamation activities) that require a Federal action (permit, authorization, or funding).	None.

¹ This column represents the activities potentially affected by listing the Alameda whipsnake as a threatened species (December 5, 1997; 62 FR 64306) under the Endangered Species Act.

² This column represents the activities potentially affected by the critical habitat designation in addition to those activities potentially affected by listing the species.

³ Activities initiated by a Federal agency.

⁴ Activities initiated by a private or other non-Federal entity that may need Federal authorization or funding.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

In the economic analysis (under section 4 of the Act), we determined that designation of critical habitat will not have a significant effect on a substantial number of small entities. As discussed under Regulatory Planning and Review above, this rule is not expected to result in any restrictions in addition to those currently in existence. As indicated on Table 1 (see Critical Habitat section), we designated property owned by Federal, State, and local governments, and private property.

Within these areas, the types of Federal actions or authorized activities that we have identified as potential concerns are:

- (1) Sale, exchange, or lease of lands owned by the Bureau of Land Management or the Department of Energy;
- (2) Regulation of activities affecting waters of the United States by the Army Corps of Engineers under section 404 of the Clean Water Act;
- (3) Regulation of water flows, water delivery, damming, diversion, and channelization by the Bureau of Reclamation and the Army Corps of Engineers;
- (4) Regulation of grazing, recreation, or mining by the Bureau of Land Management;
- (5) Funding and implementation of disaster relief projects by FEMA;
- (6) Funding and regulation of road construction by the Federal Highways Administration;

(7) Clearing of vegetation by the Department of Energy; and

(8) The cleanup of toxic waste and superfund sites under the Resource Conservation and Recovery Act (RCRA) and the Comprehensive Environmental Response, Compensation, and Liability Act by the U.S. Environmental Protection Agency.

Many of these activities sponsored by Federal agencies within designated critical habitat areas are carried out by small entities (as defined by the Regulatory Flexibility Act) through contract, grant, permit, or other Federal authorization. As discussed above, these actions are currently required to comply with the listing protections of the Act, and the designation of critical habitat is not anticipated to have any additional effects on these activities.

For actions on non-Federal property that do not have a Federal connection (such as funding or authorization), the current restrictions concerning take of the species remain in effect, and this rule will have no additional restrictions.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))

In the economic analysis, we determined that designation of critical habitat will not cause (a) any effect on the economy of \$100 million or more, (b) any increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or (c) any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability

of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

Under the Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.):

(a) This rule will not “significantly or uniquely” affect small governments. A Small Government Agency Plan is not required. Small governments will be affected only to the extent that any of their actions involving Federal funding or authorization must not destroy or adversely modify the critical habitat. However, as discussed above, these actions are currently subject to equivalent restrictions through the listing protections of the species, and no further restrictions are anticipated to result from critical habitat designation.

(b) This rule will not produce a Federal mandate of \$100 million or greater in any year, i.e., it is not a “significant regulatory action” under the Unfunded Mandates Reform Act.

Takings

Under Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required. As discussed above, the designation of critical habitat affects only Federal agency actions. The rule will not increase or decrease the current restrictions on private property concerning take of the Alameda whipsnake. Due to current public knowledge of the species’ protection, the prohibition against take of the species both within and outside of the

designated areas, and the fact that critical habitat provides no incremental restrictions, we do not anticipate that long-term property values will be affected by the critical habitat designation.

Federalism

Under Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior and Department of Commerce policy, the Service requested information from and coordinated development of this critical habitat proposal with appropriate State resource agencies in California, as well as during the listing process. We will continue to coordinate any future designation of critical habitat for the Alameda whipsnake with the appropriate State agencies. The designation of critical habitat for the Alameda whipsnake imposes no additional restrictions to those currently in place and, therefore, has little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas essential to the conservation of the species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are specifically identified. While making this definition and identification does not alter where and what federally sponsored activities may occur, doing so may assist these local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

Civil Justice Reform

Under Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have made every effort to ensure that this final determination contains no drafting errors, provides clear standards, simplifies procedures, reduces burden, and is clearly written so that litigation risk is minimized.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any information collection requirements for which Office of Management and Budget approval under the Paperwork Reduction Act is required.

National Environmental Policy Act

We have determined that we do not need to prepare an Environmental Assessment and/or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 in connection with regulations adopted under section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Government-to-Government Relationship With Tribes

Under the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951) and the Department of the Interior's requirement at 512 DM 2 we understand that recognized Federal

Tribes must be related to on a Government-to-Government basis. The designation of critical habitat for the Alameda whipsnake does not contain any Tribal lands or lands that we have identified as impacting Tribal trust resources.

References Cited

A complete list of all references cited in this rule is available upon request from the Sacramento Fish and Wildlife Office (see **ADDRESSES** section).

Authors

The primary authors of this notice are Jason Davis and Heather Bell, Sacramento Fish and Wildlife Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

For the reasons given in the preamble, we amend 50 CFR part 17 as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.11(h) revise the entry for "Whipsnake, Alameda" under "REPTILES" to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate popu- lation where endan- gered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
REPTILES							
*	*	*	*	*	*		*
Whipsnake, Alameda (=striped racer).	<i>Masticophis lateralis euryxanthus</i> .	U.S.A. (CA)	Entire	T	628	17.95(c)	NA
*	*	*	*	*	*		*

3. Amend § 17.95(c) by adding critical habitat for the Alameda whipsnake (*Masticophis lateralis euryxanthus*) in the same alphabetical order as this species occurs in § 17.11(h).

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(c) *Reptiles.*

* * * * *

ALAMEDA WHIPSNAKE (*Masticophis lateralis euryxanthus*)

1. Critical habitat units are depicted for Alameda, Contra Costa, San Joaquin, and

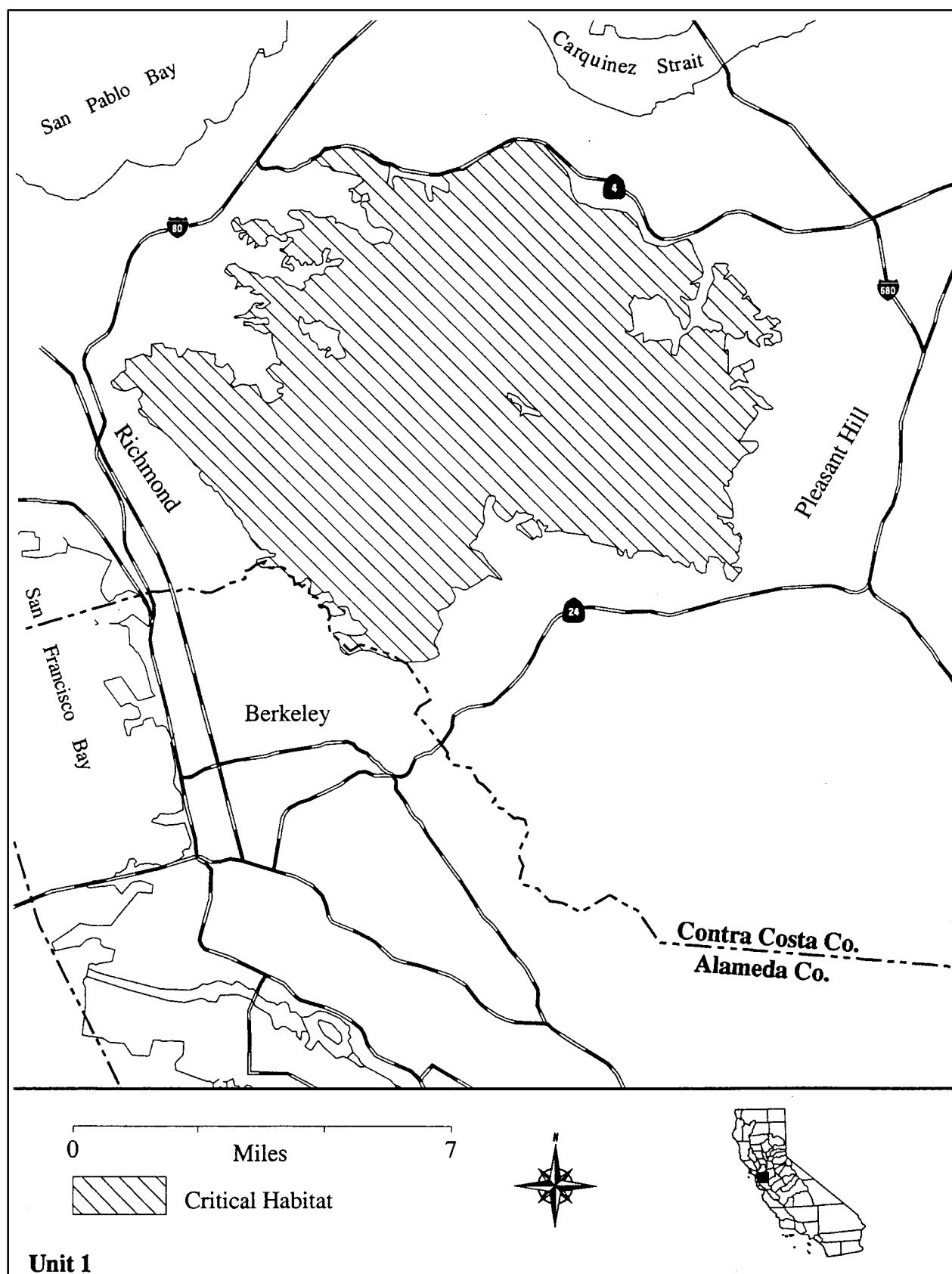
Santa Clara Counties, California, on the maps below.

2. Within these areas, the primary constituent elements are those habitat components that are essential for the primary biological needs of foraging, sheltering, breeding, maturation, and dispersal. The primary constituent elements are in areas that support scrub communities including mixed chaparral, chamise-redshank chaparral, and coastal scrub and annual grassland and various oak woodlands that lie adjacent to scrub habitats. In addition, the primary constituent elements for the Alameda whipsnake may be found in grasslands and various oak woodlands that

are linked to scrub habitats by substantial rock outcrops or riparian corridors. Other habitat features that provide a source of cover for the whipsnake during dispersal or lie in reasonable proximity to scrub habitats and contain habitat features (e.g., rock outcrops) that support adequate prey populations may also contain primary constituent elements for the Alameda whipsnake.

3. Critical habitat does not include existing features and structures, such as buildings, roads, railroads, large water bodies, and similar features and structures not containing one or more of the primary constituent elements.

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Map Unit 1: Contra Costa County, California. From 1992 Orthophoto quads,

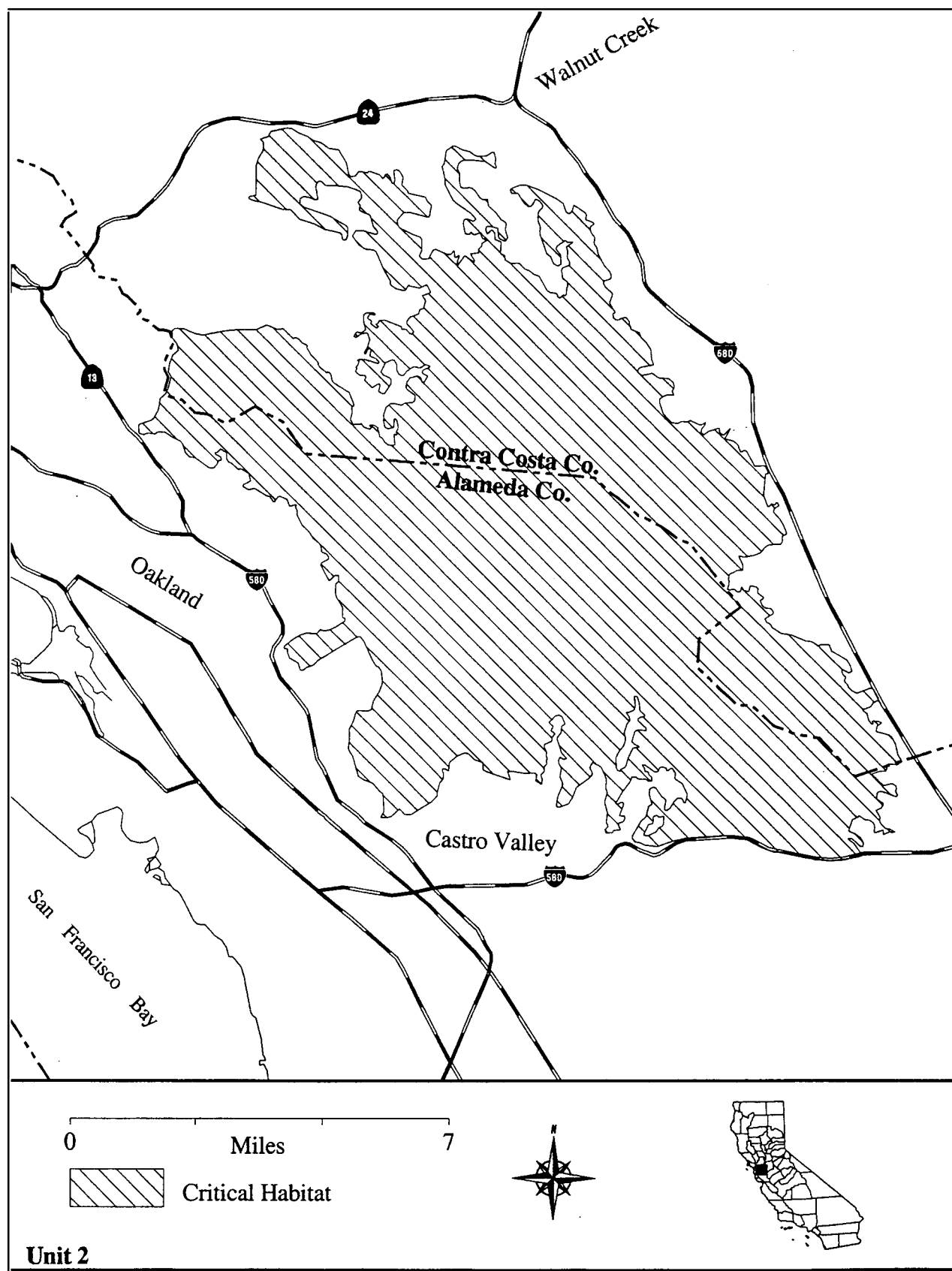
Mount Diablo Base Meridian, California: T. 2 N., R. 4 W., S $\frac{1}{2}$ sec. 13, SE $\frac{1}{4}$ sec. 23, N $\frac{1}{2}$

SE $\frac{1}{4}$ sec. 24, sec. 25, N $\frac{1}{2}$ SE $\frac{1}{4}$ sec. 26, E $\frac{1}{2}$ sec. 27, E $\frac{1}{2}$ sec. 34 secs. 35–36; T. 2 N., R.

3 W., S $\frac{1}{2}$ sec. 15, S $\frac{1}{2}$ sec. 16, SW $\frac{1}{4}$ sec. 18, secs. 19–22, S $\frac{1}{2}$ NW $\frac{1}{4}$ sec., 23, SW $\frac{1}{4}$ sec. 24, secs. 25–36; T. 2 N., R. 2 W., S $\frac{1}{2}$ sec. 30, sec. 31, SW $\frac{1}{4}$ sec. 32; T. 1 N., R. 4 W., secs. 1–2, S $\frac{1}{2}$ sec. 3, sec. 4, SE $\frac{1}{4}$ sec. 5, N $\frac{1}{2}$ SE $\frac{1}{4}$

sec. 8, secs. 9–15, N $\frac{1}{2}$ sec. 16, N $\frac{1}{2}$ SE $\frac{1}{4}$ sec. 21, secs. 22–26, NE $\frac{1}{4}$ sec. 27, N $\frac{1}{2}$ SE $\frac{1}{4}$ sec. 36; T. 1 N., R. 3 W., secs. 1–24, N $\frac{1}{2}$ sec. 25, N $\frac{1}{2}$ sec. 26, N $\frac{1}{2}$ sec. 27, S $\frac{1}{2}$ NW $\frac{1}{4}$ sec. 28, secs. 29–32; T. 1. N., R. 2 W., secs. 5–7, S $\frac{1}{2}$

NW $\frac{1}{4}$ sec. 8, W $\frac{1}{2}$ sec. 17, secs. 18–19, W $\frac{1}{2}$ sec. 29; sec. 30; T. 1. S., R. 3 W., N $\frac{1}{2}$ sec. 5, N $\frac{1}{2}$ sec. 6.



Map Unit 2: Alameda and Contra Costa
Counties, California. From 1992 Orthophoto

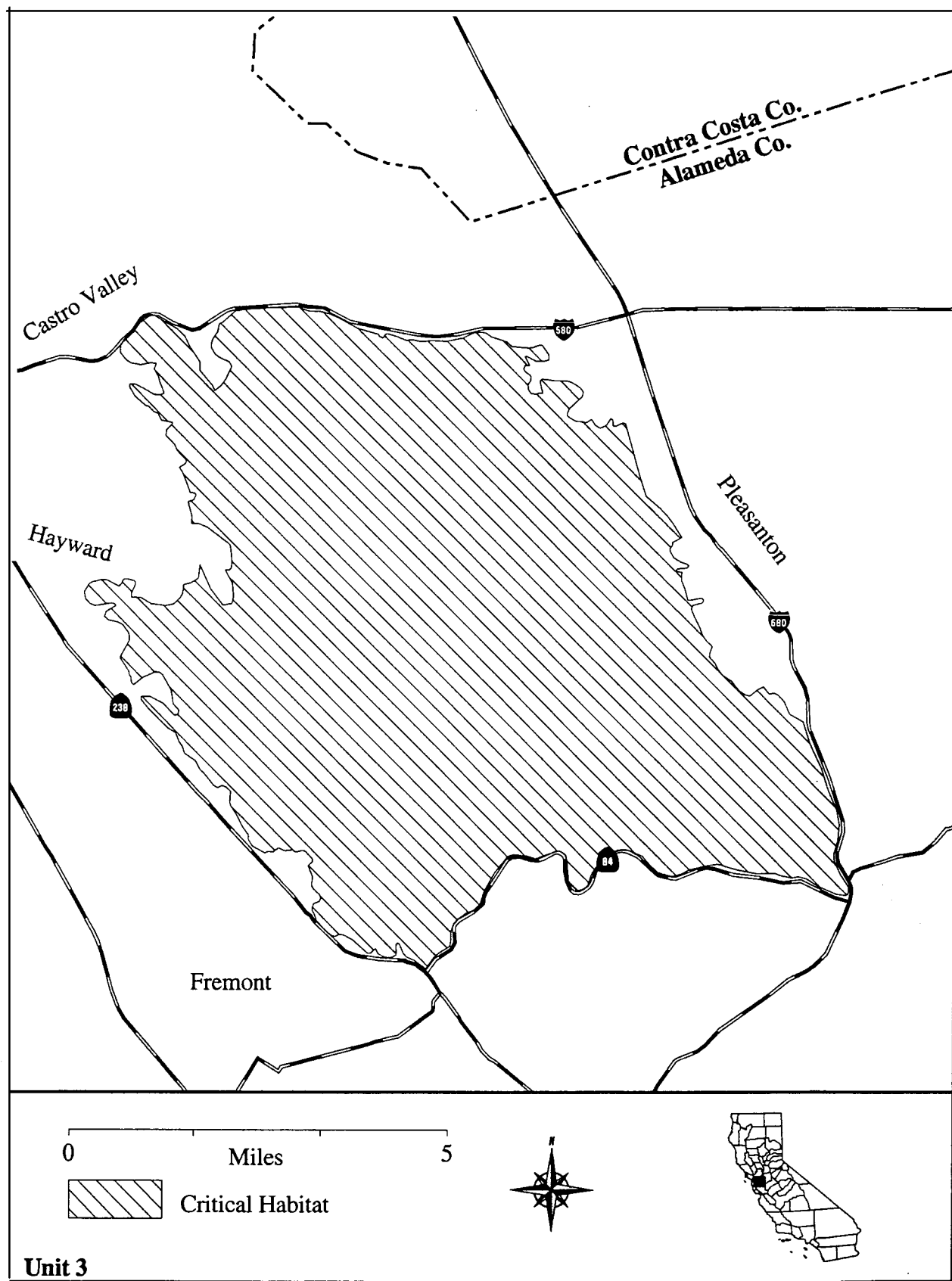
quads, Mount Diablo Base Meridian,
California: T. 1 N., R. 3 W., SE $\frac{1}{4}$ sec. 35, S $\frac{1}{2}$

NW $\frac{1}{4}$ sec. 36; T. 1. N., R. 2 W., SW $\frac{1}{4}$ sec.
31, S $\frac{1}{2}$ sec. 33, SW $\frac{1}{4}$ sec. 34; T. 1 S., R. 3

W., sec. 1, E $\frac{1}{2}$ sec. 2, NE $\frac{1}{4}$ sec. 12, SW $\frac{1}{2}$ sec. 13, S $\frac{1}{2}$ sec. 14, S $\frac{1}{2}$ sec. 15, secs. 22–27, SE $\frac{1}{4}$ sec. 28, NE $\frac{1}{4}$ sec. 34, N $\frac{1}{2}$ SE $\frac{1}{4}$ sec. 35, sec. 36; T. 1 S., R. 2 W., S $\frac{1}{2}$ sec. 2, secs. 3–6, N $\frac{1}{2}$ SE $\frac{1}{4}$ sec. 7, secs. 8–11, SW $\frac{1}{4}$ sec. 12, S $\frac{1}{2}$ NW sec. 13, secs. 14–17, SE $\frac{1}{4}$ sec. 18, S $\frac{1}{2}$

NE $\frac{1}{4}$ sec. 19, secs. 20–36; T. 1 S., R. 1 W., SW $\frac{1}{4}$ sec. 19, SW $\frac{1}{4}$ sec. 29, S $\frac{1}{2}$ NW $\frac{1}{4}$ sec. 30, secs. 31–32; T. 2 S., R. 3 W., N $\frac{1}{2}$ SE $\frac{1}{4}$ sec. 1, NE $\frac{1}{4}$ sec. 12, S $\frac{1}{2}$ sec. 13, N $\frac{1}{2}$ sec. 24; T. 2 S., R. 2 W., secs. 1–18, E $\frac{1}{2}$ sec. 19, secs. 20–30, N $\frac{1}{2}$ SE $\frac{1}{4}$ sec. 31, sec. 32, N $\frac{1}{2}$ sec.

33, N $\frac{1}{2}$ sec. 34, N $\frac{1}{2}$ SW $\frac{1}{4}$ sec. 35, sec. 36; T. 2 S., R. 1 W., W $\frac{1}{4}$ sec. 4, secs. 5–6, S $\frac{1}{2}$ sec. 16, secs. 17–21, S $\frac{1}{2}$ NW $\frac{1}{4}$ sec. 22, W $\frac{1}{2}$ sec. 26, secs. 27–34, W $\frac{1}{2}$ sec. 35; T. 3 S., R. 1 W., NW $\frac{1}{4}$ sec. 2, secs. 3–4, N $\frac{1}{2}$ SE $\frac{1}{4}$ sec. 5, N $\frac{1}{2}$ sec. 6; T. 3 S., R. 2 W., N $\frac{1}{2}$ sec. 1.



Map Unit 3: Alameda County, California.
From 1992 Orthophoto quads, Mount Diablo

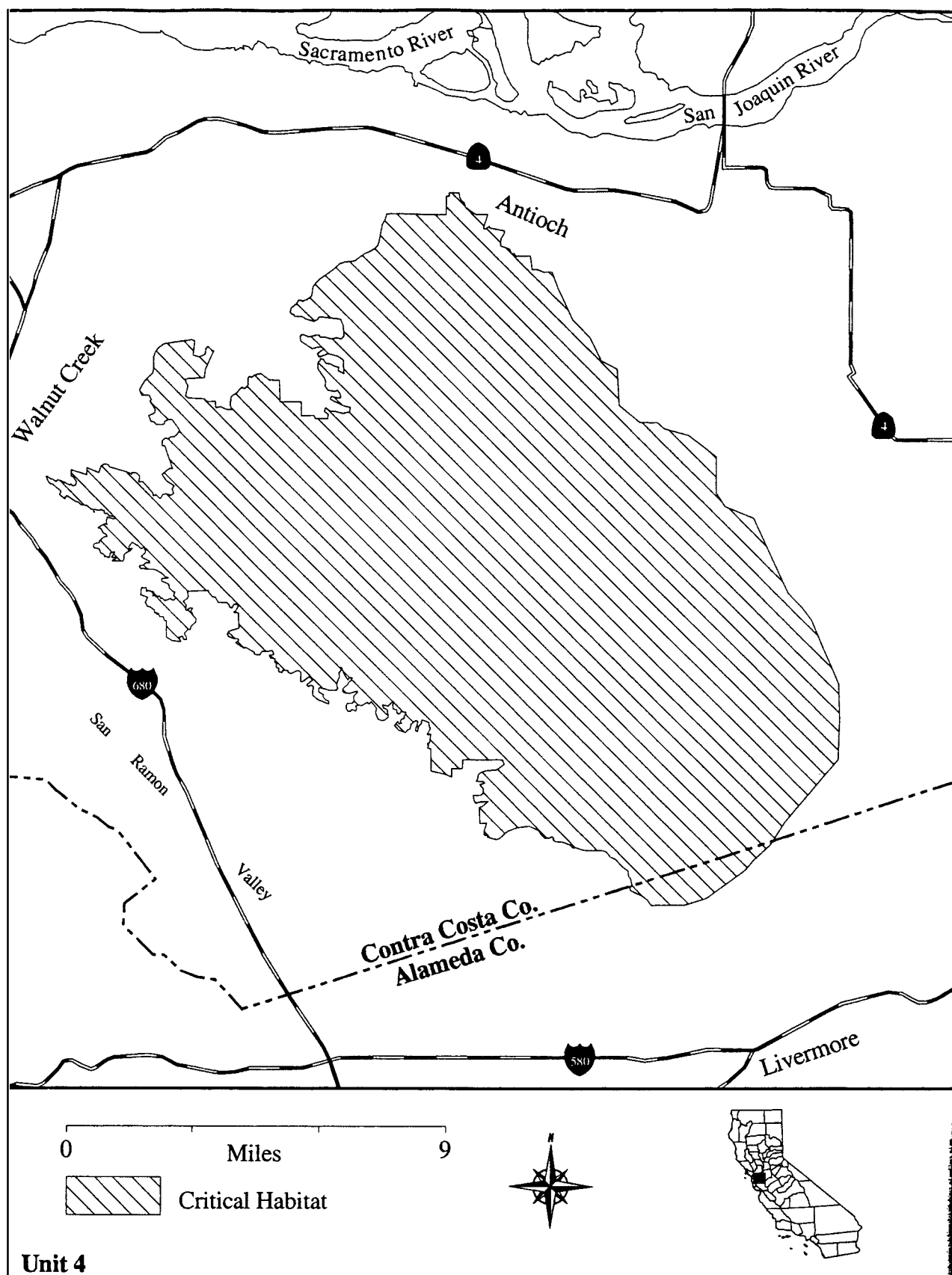
Base Meridian, California: T. 3 S., R. 2 W.,
sec. 1, sec. 12, E $\frac{1}{2}$ sec. 13, SW $\frac{1}{4}$ sec. 24, sec.

25, NE $\frac{1}{4}$ sec. 26, secs. 35-36; T. 3 S., R. 1
W., SW $\frac{1}{4}$ sec. 2, S $\frac{1}{2}$ sec. 3, S $\frac{1}{2}$ sec. 4, S $\frac{1}{2}$

NW $\frac{1}{4}$ sec. 5, S $\frac{1}{2}$ NE $\frac{1}{4}$ sec. 6, secs. 7–11,
SW $\frac{1}{4}$ sec. 12, secs. 13–36; T. 3 S., R. 1 E.,
W $\frac{1}{2}$ sec. 19, S $\frac{1}{2}$ NW $\frac{1}{4}$ sec. 30, sec. 31, S $\frac{1}{2}$

sec. 32; T. 4 S., R. 2 W., NE $\frac{1}{4}$ sec. 1; T. 4
S., R. 1 W., secs. 1–6, NE $\frac{1}{4}$ sec. 7, secs. 8–
12, NE $\frac{1}{4}$ sec. 14, N $\frac{1}{2}$ SW $\frac{1}{4}$ sec. 15, sec. 16,

N $\frac{1}{2}$ SE $\frac{1}{4}$ sec. 17, NE $\frac{1}{4}$ sec. 21; T. 4 S., R.
1 E., W $\frac{1}{2}$ sec. 4, secs. 5–8, W $\frac{1}{2}$ sec. 9, NW $\frac{1}{4}$
sec. 16.



Map Unit 4: Alameda and Contra Costa Counties, California. From 1992 Orthophoto

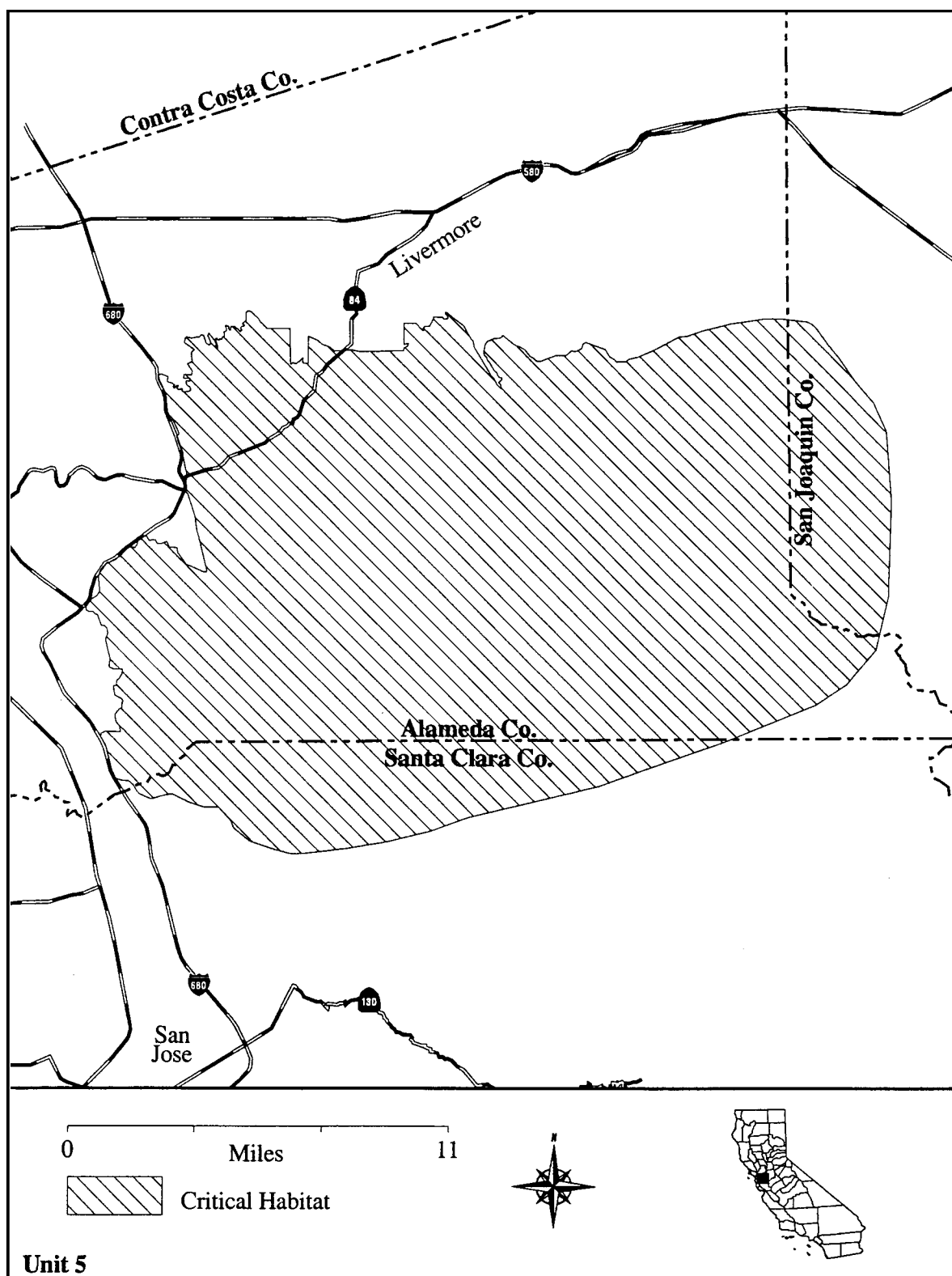
quads, Mount Diablo Base Meridian, California: T. 2 N., R. 1 W., SE $\frac{1}{4}$ sec. 36; T.

2 N., R. 1 E., S $\frac{1}{2}$ NW $\frac{1}{4}$ sec. 27, S $\frac{1}{2}$ NE $\frac{1}{4}$ sec. 28, S $\frac{1}{2}$ sec. 29, SE $\frac{1}{4}$ sec. 30, S $\frac{1}{2}$ NE $\frac{1}{4}$

sec. 31, secs. 32–34, S $\frac{1}{2}$ sec. 35; T. 1 N., R. 2 W., S $\frac{1}{2}$ sec. 25, SE $\frac{1}{4}$ sec. 26, N $\frac{1}{2}$ sec. 36; T. 1 N., R. 1 W., sec. 1, SE $\frac{1}{4}$ sec. 2, SE $\frac{1}{4}$ sec. 8, S $\frac{1}{2}$ sec. 9, sec. 12, N $\frac{1}{2}$ SE $\frac{1}{4}$ sec. 13, W $\frac{1}{2}$ sec. 14, S $\frac{1}{2}$ NE $\frac{1}{4}$ sec. 15, sec. 17, N/12 SE $\frac{1}{4}$ sec. 20, secs. 21–28, E $\frac{1}{2}$ SW $\frac{1}{4}$ sec. 29, S $\frac{1}{2}$ sec. 30, sec. 31, secs. 32–36; T. 1 N., R. 1.

E., W $\frac{1}{2}$ sec. 1, secs. 2–11, sec. 12, secs. 13–36; T. 1 N., R. 2 E., SW $\frac{1}{4}$ sec. 7, W $\frac{1}{2}$ sec. 18, sec. 19, S $\frac{1}{2}$ sec. 20, SW $\frac{1}{4}$ sec. 21, secs. 28–33, S $\frac{1}{2}$ sec. 34; T. 1 S., R. 1 W., secs. 1–5, N $\frac{1}{2}$ SE $\frac{1}{4}$ sec. 6, sec. 8, N $\frac{1}{2}$ SW $\frac{1}{4}$ sec. 9, secs. 10–15, NW $\frac{1}{4}$ sec. 16, NE $\frac{1}{4}$ sec. 17, N $\frac{1}{2}$ SE $\frac{1}{4}$ sec. 23, sec. 24, N $\frac{1}{2}$ sec. 25; T. 1 S.,

R. 1 E., secs. 1–29, N $\frac{1}{2}$ sec. 30, NE $\frac{1}{4}$ sec. 32, sec. 33–36; T. 1 S., R. 2 E., SW $\frac{1}{4}$ sec. 2, secs. 3–10, S $\frac{1}{2}$ NW $\frac{1}{4}$ sec. 11, W $\frac{1}{2}$ sec. 13, secs. 14–36; T. 2 S., R. 1 E., secs. 1–3, N $\frac{1}{2}$ sec. 10, N $\frac{1}{2}$ sec. 11, sec. 12; T. 2 S., R. 2 E., NW $\frac{1}{4}$ sec. 1, secs. 2–10, W $\frac{1}{2}$ sec. 11, N $\frac{1}{2}$ sec. 15, sec. 16–17, E $\frac{1}{2}$ sec. 18.



Map Unit 5: Alameda, Contra Costa, San Joaquin, and Santa Clara Counties, California. From 1992 Orthophoto quads, Mount Diablo

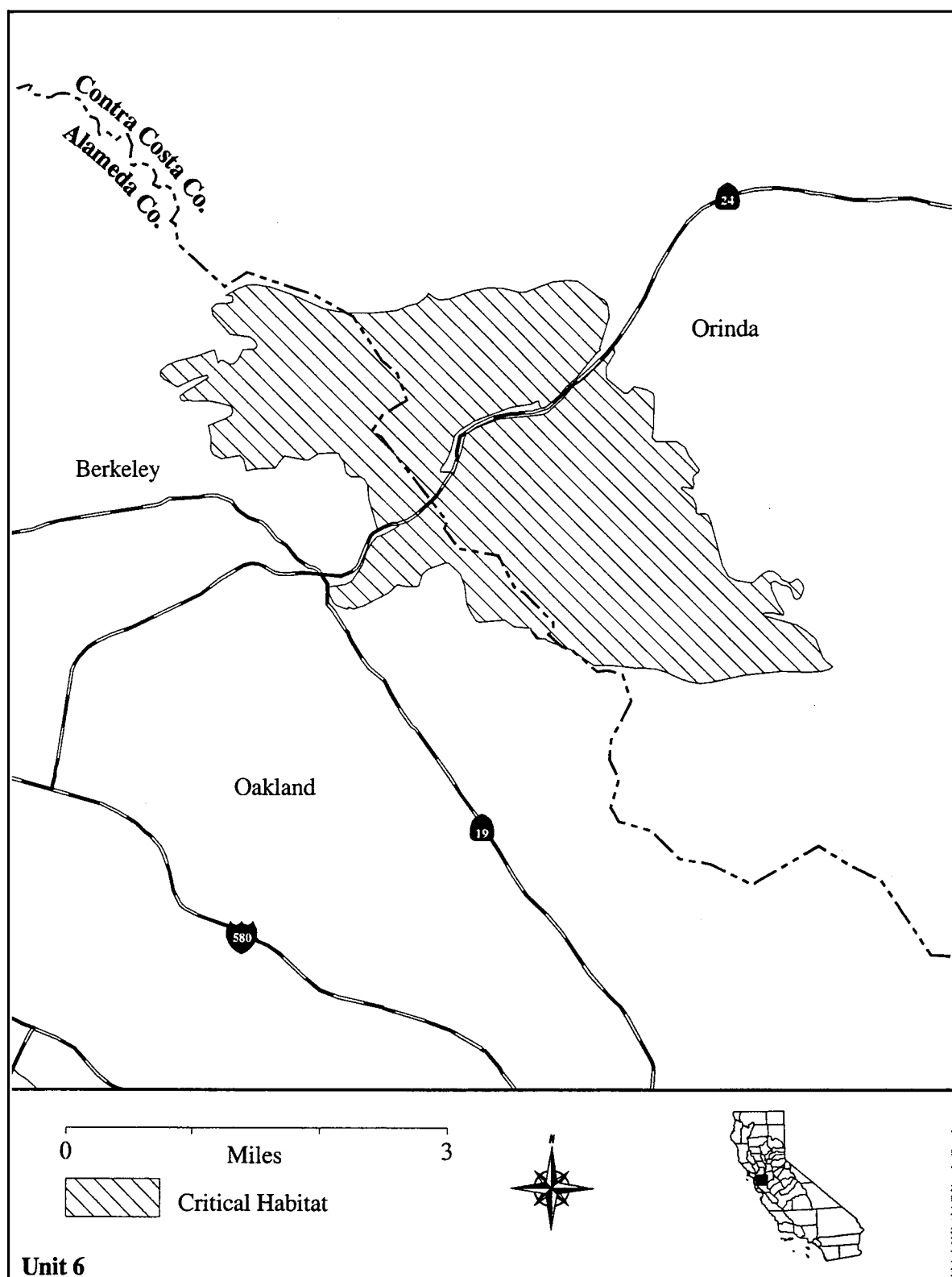
Base Meridian, California: T. 3 N., R. 1 E., SE $\frac{1}{4}$ sec. 21, S $\frac{1}{2}$ sec. 22, S $\frac{1}{2}$ NW $\frac{1}{4}$ sec. 23,

SW $\frac{1}{4}$ sec. 24, S $\frac{1}{2}$ NW $\frac{1}{4}$ sec. 25, secs. 26–

27, E $\frac{1}{2}$ sec. 28, SE $\frac{1}{4}$ sec. 29, NE $\frac{1}{4}$ sec. 32, secs. 33–36; T. 3 S., R. 2 E., SW $\frac{1}{4}$ sec. 19, SE $\frac{1}{4}$ sec. 21, S $\frac{1}{2}$ NE $\frac{1}{4}$ sec. 22, S $\frac{1}{2}$ NW $\frac{1}{4}$ sec. 23, SE $\frac{1}{4}$ sec. 24, secs. 25–36; T. 3 S., R. 3 E., S $\frac{1}{2}$ sec. 24, secs. 25–26, S $\frac{1}{2}$ NE $\frac{1}{4}$ sec. 27, S $\frac{1}{2}$ NW $\frac{1}{4}$ sec. 28, S $\frac{1}{2}$ NE $\frac{1}{4}$ sec. 29, S $\frac{1}{2}$ NW $\frac{1}{4}$ sec. 30, secs. 31–36; T. 3 S., R. 4 E., S $\frac{1}{2}$ sec. 19, S $\frac{1}{2}$ sec. 20, S $\frac{1}{2}$ sec. 21, SW $\frac{1}{4}$ sec. 27, secs. 28–33, S $\frac{1}{2}$ NW $\frac{1}{4}$ sec. 34; T. 4

S., R. 1 W., E $\frac{1}{2}$ sec. 25, E $\frac{1}{2}$ sec. 36; T. 4 S., R. 1 E., secs. 1–4, E $\frac{1}{2}$ sec. 9, secs. 10–15, E $\frac{1}{2}$ sec. 16, SE $\frac{1}{4}$ sec. 19, S $\frac{1}{2}$ sec. 20, S $\frac{1}{2}$ NE $\frac{1}{4}$ sec. 21, secs. 22–36; T. 4 S., R. 2 E., secs. 1–36; T. 4 S., R. 3 E., secs. 1–36; T. 4 S., R. 4 E., W $\frac{1}{2}$ sec. 2, secs. 3–10, W $\frac{1}{2}$ sec. 11, W $\frac{1}{2}$ sec. 11, W $\frac{1}{2}$ sec. 14, secs. 15–22, W $\frac{1}{2}$ sec. 23, W $\frac{1}{2}$ sec. 26, secs. 27–34, W $\frac{1}{2}$ sec. 35; T. 5 S., R. 1 E., secs. 1–29, N $\frac{1}{2}$ SE $\frac{1}{4}$ sec. 30, N $\frac{1}{2}$

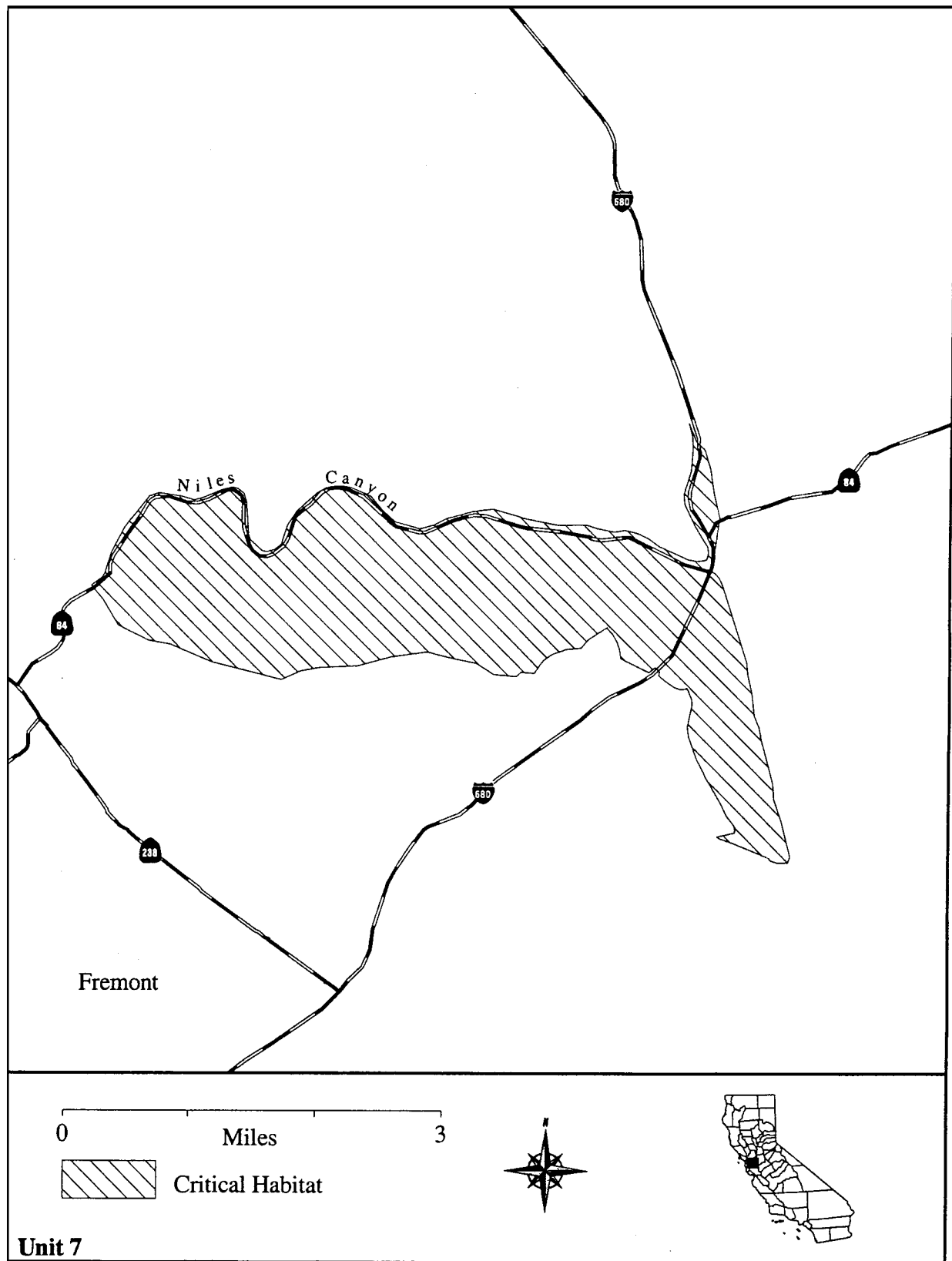
sec. 33, N $\frac{1}{2}$ SE $\frac{1}{4}$ sec. 34, secs. 35–36; T. 5 S., R. 2 E., secs. 1–35, N $\frac{1}{2}$ SW $\frac{1}{4}$ sec. 36; T. 5 S., R. 3 E., secs. 1–24, N $\frac{1}{2}$ sec. 26, N $\frac{1}{2}$ SW $\frac{1}{4}$ sec. 27, secs. 28–30, N $\frac{1}{2}$ sec. 31, N $\frac{1}{2}$ sec. 32; T. 5 S., R. 4 E., W $\frac{1}{2}$ sec. 2, secs. 3–9, N $\frac{1}{2}$ SW $\frac{1}{4}$ sec. 10, N $\frac{1}{2}$ SW $\frac{1}{4}$ sec. 16, secs. 17–18, N $\frac{1}{2}$ sec. 19; T. 6 S., R. 1 E., sec. 1, N $\frac{1}{2}$ sec. 2; T. 6 S., R. 2 E., N $\frac{1}{2}$ sec. 3, N $\frac{1}{2}$ sec. 4, N $\frac{1}{2}$ sec. 5, N $\frac{1}{2}$ sec. 6.



Map Unit 6: Alameda and Contra Costa Counties, California. From 1992 Orthophoto quads, Mount Diablo Base Meridian,

California: T. 1 N., R. 4 W., SE $\frac{1}{4}$ sec. 36; T. 1 N., R. 3 W., SW $\frac{1}{4}$ sec. 31, S $\frac{1}{2}$ sec. 33; T. 1 S., R. 4 W., S $\frac{1}{2}$ NE $\frac{1}{4}$ sec. 1, NE $\frac{1}{4}$ sec. 12;

T. 1 S., R. 3 W., W $\frac{1}{2}$ sec. 3, secs. 4-6, N $\frac{1}{2}$ SE $\frac{1}{4}$ sec. 7, secs. 8-10, secs. 14-15, N $\frac{1}{2}$ SE $\frac{1}{4}$ sec. 16, N $\frac{1}{2}$ sec. 17, NE $\frac{1}{4}$ sec. 18.



Map Unit 7: Alameda County, California.
From 1992 Orthophoto quads, Mount Diablo
Base Meridian, California: T. 4 S., R. 1 W.,
SE $\frac{1}{4}$ sec. 10, S $\frac{1}{2}$ sec. 11, S $\frac{1}{2}$ sec. 12, secs.
13–14, E $\frac{1}{2}$ sec. 15, NE $\frac{1}{4}$ sec. 23, NW $\frac{1}{4}$ sec.

24; T. 4 S., R. 1 E., S $\frac{1}{2}$ sec. 7, S $\frac{1}{2}$ sec. 8,
sec. 9, secs. 16–18, NE $\frac{1}{4}$ sec. 19, NE $\frac{1}{4}$ sec.
20, sec. 21, W $\frac{1}{2}$ sec. 27, N $\frac{1}{2}$ sec. 28.

Dated: September 21, 2000.

Stephen C. Saunders,

*Acting Assistant Secretary for Fish and
Wildlife and Parks.*

[FR Doc. 00–24763 Filed 10–2–00; 8:45 am]

BILLING CODE 4310–55–P

Proposed Rules

Federal Register

Vol. 65, No. 192

Tuesday, October 3, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 126

HUBZone Program

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The Small Business Administration (SBA) proposes to amend its regulations governing the HUBZone Empowerment Contracting Program (HUBZone program). Now that SBA has officially launched the program, has received over two thousand applications for HUBZone certification, and has certified concerns into the program, SBA believes that it should make the following four regulatory amendments and clarifications to improve the administration and operation of the HUBZone program. First, SBA proposes to amend the provisions governing the application of the HUBZone program to various government departments and agencies. It proposes to add three federal agencies to the current list of agencies that are affected directly by the HUBZone program and to clarify that the HUBZone program does not apply to contracts awarded by state and local governments. Second, SBA proposes to amend the definition of the term "principal office" to accommodate those concerns whose industries require employees to perform their work at various job sites. Third, SBA proposes to eliminate the existing program eligibility restrictions on allowable affiliations of HUBZone small business concerns, since those requirements have proven to be unduly burdensome on otherwise eligible concerns. Finally, SBA proposes to ease the program eligibility requirements and procurement restrictions concerning qualified HUBZone small business concerns that operate as non-manufacturers because those requirements are unnecessary and overly restrictive.

DATES: Submit comments on or before November 2, 2000.

ADDRESSES: Send your comments to Michael McHale, Associate Administrator for the HUBZone Program, 409 Third Street, SW, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Michael McHale, Associate Administrator for the HUBZone Program, (202) 205-6731 or hubzone@sba.gov.

SUPPLEMENTARY INFORMATION: The HUBZone program was established pursuant to the HUBZone Act of 1997 (HUBZone Act), Title VI of the Small Business Reauthorization Act of 1997, Pub. L. No. 105-135, enacted December 2, 1997. The purpose of the HUBZone program is "to provide for Federal contracting assistance to qualified HUBZone small business concerns." 15 U.S.C. 657a(a). The HUBZone Act authorizes the SBA Administrator to publish regulations implementing the program. Pub. L. No. 105-135, § 605. On April 2, 1998, SBA published its proposed rules for the HUBZone program. 63 FR 16148. After the close of the public comment period and review of the comments, SBA published its final regulations, which became effective on September 9, 1998. 63 FR 31896 (June 11, 1998). The final HUBZone regulations, among other things, set forth the definition of key terms used in the regulations, the criteria for qualification as a HUBZone small business concern (SBC) and the Federal contracting assistance available to qualified HUBZone SBCs.

Based upon the operation of the program since the effective date of the final HUBZone regulations, SBA has become aware of certain amendments that it believes should be made to the program's regulations. SBA proposes these amendments to clarify existing regulations, streamline the operation of the HUBZone program and ease program eligibility requirements perceived to be burdensome on concerns.

SBA proposes to amend § 126.101, concerning the application of the HUBZone program to various government departments and agencies. Specifically, paragraph (a) of that section lists the ten federal agencies to which the HUBZone Act originally applied and provides in paragraph (b) that after September 30, 2000, the HUBZone program will apply to all federal departments and agencies which

employ one or more contracting officers as defined by 41 U.S.C. 423(f)(5). On November 29, 1999, Congress enacted Pub. L. 106-113. Section 212 of that statute requires that the HUBZone Act also apply to three additional agencies: the Department of Commerce, the Department of Justice, and the Department of State. This proposed rule would add these three federal agencies to the list in paragraph (a).

This proposed rule would also add a new paragraph (c) to § 126.101, to make clear that the HUBZone program does not apply to contracts awarded by state and local governments, since the HUBZone Act only applies to the federal government. The proposed paragraph (c) would also indicate that state and local governments that have programs similar to the HUBZone program are free to use SBA's List of qualified HUBZone SBCs to identify such concerns.

SBA proposes to amend the definition of "principal office." Currently, § 126.103 defines "principal office" to mean the location where the greatest number of the concern's employees at any one location perform their work. SBA proposes to amend that definition to accommodate those concerns whose primary industry requires employees to perform their work at various job sites. SBA received several comments on this definition of "principal office" when it originally proposed the current rule, but believed that the definition would not prevent those concerns from participating in the HUBZone program. See 63 FR 31898. SBA has re-evaluated this definition in light of experience and has found that maintaining compliance with the current definition of "principal office" is difficult for those concerns engaged in the service and construction industries because under this definition, their principal office is subject to change from contract to contract. As a result, SBA proposes that for concerns whose primary industry is services or construction (*i.e.*, other than manufacturing), the principal office would be the location where the greatest number of the concern's employees perform their work, but excluding those employees who perform their work at job-site locations to fulfill specific contract obligations. For example, a construction concern might have an office in a HUBZone where 10 employees perform their work. This

same firm might have a construction contract at a local government facility not located in a HUBZone, where 50 of the concern's employees work to fulfill the obligations of the construction contract. According to the proposed definition, the concern's principal office would be in the HUBZone.

SBA requests public comment regarding our proposal to restrict this change only to the construction and service industries. We chose not to include manufacturing concerns in this change because such firms tend to operate with fixed plant, equipment and personnel tied to one location. Further, we believe that the exclusion of manufacturing firms from this revised definition is consistent with the purpose of the HUBZone Act of 1997, to both encourage employment opportunities and increase the level of investment in HUBZones.

Next, SBA proposes to amend § 126.204, which provides certain restrictions on the allowable affiliations of a qualified HUBZone SBC. Currently, § 126.204 permits a qualified HUBZone SBC to have affiliates only if those affiliates are qualified HUBZone SBCs, participants in the 8(a) Business Development (8(a) BD) program, or woman-owned businesses (WOBs). Although that restriction is not required by statute, SBA included it in both the proposed and final HUBZone regulations to ensure that the HUBZone program was implemented in a manner that supported rather than undermined existing programs designed to assist small businesses. 63 FR 16150. As a means of support to the 8(a) BD program, SBA explained in the preamble to the proposed HUBZone regulation that minimizing the restrictions on the participation of 8(a) BD participants in the HUBZone program would provide an additional source of government contract assistance for 8(a) BD participants and would therefore enhance the business development objectives of that program. 63 FR 16151. SBA also explained in the preamble that allowing WOBs the maximum opportunity to qualify as HUBZone SBCs would provide the type of assistance that Congress determined in the Small Business Act was necessary to remove the discriminatory barriers to the development of WOBs. *Id.* SBA adopted this approach in its final regulations. 63 FR 31899.

Since the effective date of the final HUBZone regulations, SBA has received over two thousand applications for certification under the HUBZone program. As a result of the limitation on allowable affiliations with only the three types of SBCs specified in the

current § 126.204, SBA has had to decline a number of otherwise eligible applicants for HUBZone certification. The restrictions likewise have operated to limit HUBZone certification of 8(a) BD participants and WOBs that have affiliates that are not themselves qualified HUBZone SBCs, 8(a) BD participants or WOBs. As a result 8(a) BD participants, WOBs, as well as other otherwise eligible SBCs alike, have been declined HUBZone certification by reason of the restriction in § 126.204. SBA now believes that the current affiliation requirement is unnecessarily restrictive and should be removed. In addition, the removal of this restriction will allow SBCs in non-HUBZone areas to establish new business ventures in HUBZones. This is especially critical due to the historical lack of investment capital in HUBZones and the need for such capital to establish new businesses that will promote economic development and create jobs.

Accordingly, SBA proposes to eliminate the existing restrictions on affiliation under § 126.204. The proposed § 126.204 would allow a qualified HUBZone SBC to have affiliates as long as it, when combined with its affiliates, is still small pursuant to SBA's size regulations contained in part 121 of this title.

Finally, SBA proposes to amend two separate, but related, provisions concerning non-manufacturers. The first proposed amendment would delete the eligibility requirement for non-manufacturers contained in § 126.206. Under this proposed rule, non-manufacturer HUBZone concerns would no longer be required to demonstrate that they can provide product or products manufactured by qualified HUBZone SBCs.

The second proposed amendment would revise § 126.601. Currently, that section provides that a qualified HUBZone SBC that operates as a non-manufacturer may submit an offer on a HUBZone contract for supplies only if the concern's small manufacturer is also a qualified HUBZone SBC. This proposed rule would amend that provision to allow qualified HUBZone SBCs that are non-manufacturers the opportunity to supply the product of any business for HUBZone contracts at or below \$25,000 in total value. The reason for this proposed change is that SBA believes that for many products purchased in small dollar quantities (at or below \$25,000), there are often too few or no small business manufacturers participating in the federal market.

Thus, SBA proposes to allow a qualified HUBZone SBC to use any manufacturer, including a large business, for HUBZone

contracts at or below \$25,000 in total value. This provision will encourage the participation of small business non-manufacturers that are located in HUBZones.

SBA believes that an exemption for contracts greater than \$25,000 would harm qualified HUBZone SBCs that are manufacturers and possibly impact the program's goal of attracting capital investment and jobs in HUBZones. SBA further believes that this proposed exemption for contracts under \$25,000 and the requirement in § 126.601 that a qualified HUBZone SBC that is a non-manufacturer may bid on HUBZone contracts for supplies only if the concern's small manufacturer is also a qualified HUBZone SBC, also support SBA's proposal to eliminate the eligibility requirement in § 126.206, that non-manufacturers demonstrate at the time of application that they can provide the product or products manufactured by a qualified HUBZone SBC. With respect to the proposed \$25,000 exemption, if the HUBZone contract is valued at or below the \$25,000 threshold, the SBC would not be required to use the products of a qualified HUBZone SBC and so should not be required to demonstrate that they would do so as a precondition to HUBZone certification. With respect to contracts above the \$25,000 threshold, § 126.601(d) requires qualified HUBZone SBCs to use a qualified HUBZone SBC manufacturer. It is therefore unnecessary to have a separate eligibility requirement that the concern demonstrate at the time of application that it can provide the product or products manufactured by a qualified HUBZone SBC.

SBA solicits comments from the public addressing the issues raised in this proposed rule, including more effective ways to address these issues and whether we have solved adequately the problems identified.

Compliance With Executive Orders 12866, 12988, and 13132, the Paperwork Reduction Act (44 U.S.C. Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601-602)

The Office of Management and Budget (OMB) reviewed this rule as a "significant" regulatory action under Executive Order 12866.

For purposes of Executive Order 12988, SBA has drafted this proposed rule, to the extent practicable, in accordance with the standards set forth in section 3 of that Order.

For purposes of Executive Order 13132, SBA has determined that this proposed rule has no federalism

implications warranting the preparation of a Federalism Assessment.

For purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA has determined that this proposed rule does not impose new reporting or recordkeeping requirements.

SBA has determined that this proposed rule may have a significant beneficial economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601, *et seq.* The amendments proposed in this rule involve revising the definition of "principal office" and eliminating certain requirements governing the allowable affiliations of qualified HUBZone SBCs and SBCs that operate as non-manufacturers. These amendments will affect a large percentage of the over 30,000 SBCs that SBA believes are now eligible or will become eligible for certification as qualified HUBZone SBCs over the life of the program. Thus, SBA has prepared an Initial Regulatory Flexibility Analysis (IRFA) and has submitted a complete copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. For a complete copy of the IRFA, please contact Michael McHale at (202) 205-6731.

The IRFA explains that this proposed rule will affect primarily those SBCs that participate in Federal procurements, that have affiliates, or that are non-manufacturers. The proposed rule will make it easier for qualified SBCs to participate in the program because it provides a definition of "principal office" that accommodates the fluid nature of the construction and service industries and it allows qualified HUBZone SBCs to have any affiliates provided that they, together with their affiliates, do not exceed their applicable size standard under part 121 of title 13 of the Code of Federal Regulations. This proposed rule will also facilitate the certification of qualified HUBZone SBCs and open the door to more HUBZone contracts by eliminating the eligibility requirement that non-manufacturers must demonstrate that they can supply the goods of a qualified SBC as a prerequisite for program certification, and by exempting non-manufacturers from making that showing when submitting offers to supply goods for HUBZone contracts with a total value of \$25,000 or less.

The IRFA further explains that these proposed amendments do not duplicate, overlap or conflict with relevant Federal regulations. It also indicates that SBA has reviewed several alternatives to the proposed amendments and that it

believes that the amendments proposed are in the best interest of SBCs and the HUBZone Program.

(Catalog of Federal Domestic Assistance Programs, No. 59,009)

List of Subjects in 13 CFR Part 126

Administrative practice and procedure, Government procurement, Reporting and recordkeeping requirements, Small businesses.

Accordingly, for the reasons set forth above, SBA proposes to amend 13 CFR part 126, as follows:

PART 126—HUBZONE PROGRAM [AMENDED]

1. Amend the authority citation for 13 CFR part 126 to read as follows:

Authority: 15 U.S.C. 632(a); Pub. L. 106-113 sec. 212, 113 Stat. 1537-289; Pub. L. 105-135 sec. 601 *et seq.*, 111 Stat. 2592.

2. Amend § 126.101 by removing paragraphs (a)(1) through (a)(10), by adding new paragraphs (a)(1) through (a)(13), and by adding a new paragraph (c) to read as follows:

§ 126.101 Which government departments or agencies are affected directly by the HUBZone program?

- (a) * * *
- (1) Department of Agriculture;
 - (2) Department of Commerce;
 - (3) Department of Defense;
 - (4) Department of Energy;
 - (5) Department of Health and Human Services;
 - (6) Department of Housing and Urban Development;
 - (7) Department of Justice;
 - (8) Department of State;
 - (9) Department of Transportation;
 - (10) Department of Veterans Affairs;
 - (11) Environmental Protection Agency;
 - (12) General Services Administration;
 - and
 - (13) National Aeronautics and Space Administration.

* * * * *

(c) The HUBZone program does not apply to contracts awarded by state and local governments. However, state and local governments may use the List of qualified HUBZone SBCs to identify qualified HUBZone SBCs for similar programs authorized under state or local law.

3. Amend § 126.103 to revise the definition of "principal office" to read as follows:

§ 126.103 What definitions are important in the HUBZone program?

* * * * *

Principal office means the location where the greatest number of the

concern's employees at any one location perform their work. However, for those concerns whose "primary industry" (see 13 CFR 121.107) is service or construction (see 13 CFR 121.201), the determination of principal office excludes the concern's employees who perform the majority of their work at job-site locations to fulfill specific contract obligations.

* * * * *

4. Revise § 126.204 to read as follows:

§ 126.204 May a qualified HUBZone SBC have affiliates?

A concern may have affiliates provided that the aggregate size of the concern and all its affiliates is small as defined in part 121 of this title.

5. Revise § 126.205 to read as follows:

§ 126.205 May non-manufacturers be certified as qualified HUBZone SBCs?

Non-manufacturers (referred to in the HUBZone Act of 1997 as "regular dealers") may be certified as qualified HUBZone SBCs if they meet all of the requirements set forth in § 126.200. "Non-manufacturer" is defined in § 121.406(b)(1) of this title.

6. Amend § 126.601 by revising paragraph (d) to read as follows:

§ 126.601 What additional requirements must a qualified HUBZone SBC meet to bid on a contract?

* * * * *

(d) A qualified HUBZone SBC which is a non-manufacturer may submit an offer on a HUBZone contract for supplies if it meets the requirements under the non-manufacturer rule as defined in § 121.406(b) of this title, and if the small manufacturer providing the end item for the contract is also a qualified HUBZone SBC. However, for HUBZone contracts at or below \$25,000 in total value, a qualified HUBZone SBC may supply the end item of any manufacturer, including a large business.

Dated: September 26, 2000.

Aida Alvarez,

Administrator.

[FR Doc. 00-25291 Filed 10-2-00; 8:45 am]

BILLING CODE 8025-01-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39****[Docket No. 2000-NM-313-AD]****RIN 2120-AA64****Airworthiness Directives; Boeing Model 737-300, -400, and -500 Series Airplanes****AGENCY:** Federal Aviation Administration, DOT.**ACTION:** Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Boeing Model 737-300, -400, and -500 series airplanes. This proposal would require, among other actions, a one-time detailed visual inspection of the fuel quantity indicating system (FQIS) wiring and fuel tubing on the inboard side of the right wing rib wing buttock line (WBL) 227 and on the aft side of stringer No. 13 to determine if clearance exists between the FQIS wire harness and the refuel tube and tube coupling, and to detect any loose or broken refuel tube clamp or bracket or chafing of the FQIS wire harness; and corrective actions, if necessary. This action is necessary to detect and correct chafing and to prevent electrical contact between the FQIS wiring and the surrounding structure, which, in conjunction with another wiring failure outside the fuel tank, could result in fire or explosion of the fuel tank. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by November 2, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2000-NM-313-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227-1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2000-NM-313-AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Sherry Vevea, Aerospace Engineer, Propulsion Branch, ANM-140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-1360; fax (425) 227-1181.

SUPPLEMENTARY INFORMATION:**Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000-NM-313-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the

FAA, Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2000-NM-313-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

The FAA has received two reports of chafing of the wire harness of the fuel quantity indicating system (FQIS) in the right main fuel tank inboard of right wing station wing buttock line (WBL) 227. Both of these reports indicated that wires were chafed down to the conductor. Investigation of one of those events revealed that the refuel tube clamp broke due to a preload on the clamp. The refuel tube shifted position, and the refuel tube coupling chafed against the FQIS wire harness. The tube coupling has a knurled surface and a lockwire that, if not located correctly, can chafe the FQIS wiring. A chafed or bare FQIS wire normally operates at five volts and does not constitute an in-tank ignition source without an additional failure condition such as wire bundle shorts outside the fuel tank.

Chafing and arcing between the FQIS wiring and the surrounding structure, in conjunction with another wiring failure outside the fuel tank, could result in fire or explosion of the fuel tank.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 737-28A1168, dated September 26, 2000. The service bulletin describes procedures for a one-time detailed visual inspection of the FQIS wiring and fuel tubing on the inboard side of the right wing rib WBL 227 and on the aft side of stringer No. 13 to determine if a 3/8-inch clearance exists between the FQIS wire harness and the refuel tube and tube coupling, and to detect any loose or broken refuel tube clamp or bracket or chafing of the FQIS wire harness; and corrective actions, if necessary. The corrective actions, if necessary, involve the following:

- Readjusting the refuel tube;
- Relocating the bonding jumper away from the FQIS wiring;
- Replacing the broken clamp with a new clamp;
- Repairing the broken bracket or replacing the broken bracket with a new bracket;
- Securing the loose clamp or bracket;
- Replacing the wire harness with a new wire harness;
- Repairing the wire harness;
- Splicing the wires; and
- Installing a teflon sleeve.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below. The proposed AD also would require that operators submit a plan to the FAA that identifies a schedule for compliance with the requirements of the proposed AD and report results of inspection findings to the manufacturer.

Difference Between This Proposed AD and the Service Bulletin

The FAA recognizes that this proposed AD would require entry into the fuel tank, which would require taking the airplane out of service for as much as two days. This lengthy shop visit, as well as the relatively short compliance time (six months) required to accomplish this proposed AD, make it necessary for operators to engage in compliance planning to ensure that, when the deadline for compliance arrives, all of the required actions have been completed on all affected airplanes. Therefore, paragraph (a) of this proposed AD would require that operators submit to the FAA a compliance plan within 15 days after the effective date. This will enable the FAA to verify that all operators will be able to meet the deadlines imposed by this proposed AD.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Cost Impact

There are approximately 1,974 airplanes of the affected design in the worldwide fleet. The FAA estimates that 796 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 1 work hour per airplane to accomplish the proposed inspection, at an average labor rate of \$60 per work hour. Based on the figures, the cost impact of the inspection proposed by this AD on U.S. operators is estimated to be \$47,760, or \$60 per airplane.

It would take approximately 16 work hours to accomplish the proposed compliance plan, at an average labor rate of \$60 per work hour. Based on these figures, the cost impact of the compliance plan proposed by this AD on U.S. operators is estimated to be \$960.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 2000–NM–313–AD.

Applicability: All Model 737–300, –400, and –500 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct chafing and to prevent electrical contact between the fuel quantity indicating system (FQIS) wiring and the surrounding structure, which, in conjunction with another wiring failure outside the fuel tank, could result in fire or explosion of the fuel tank, accomplish the following:

Compliance Plan

(a) Within 15 days after the effective date of this AD, submit a plan to the FAA that identifies a schedule for compliance with paragraph (b) of this AD. This schedule must include, for each of the operator's affected airplanes, the dates and maintenance events (e.g., letter checks) when the required actions will be accomplished. For purposes of this paragraph, "FAA" means the Principal Maintenance Inspector (PMI) for operators that are assigned a PMI, or the cognizant Flight Standards District Office for other operators. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

Inspection and Corrective Actions

(b) Within 6 months after the effective date of this AD, perform a one-time detailed visual inspection of the FQIS wiring and fuel tubing on the inboard side of the right wing rib wing buttock line (WBL) 227 and on the aft side of stringer No. 13 to determine if a 3/8-inch clearance exists between the FQIS wire harness and the refuel tube and tube coupling, and to detect any loose or broken refuel tube clamp or bracket or chafing of the FQIS wire harness, in accordance with Boeing Alert Service Bulletin 737–28A1168, dated September 26, 2000.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror,

magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(1) If the clearance between the FQIS wire harness and the refuel tube is less than $\frac{3}{8}$ -inch, prior to further flight, readjust the refuel tube, and relocate the bonding jumper away from the wiring, if necessary, in accordance with the service bulletin.

(2) If any loose or broken refuel tube clamp or bracket is found, prior to further flight, replace the broken clamp with a new clamp; repair the broken bracket or replace the broken bracket with a new bracket; and secure the loose clamp or bracket; as applicable; in accordance with the service bulletin.

(3) If any chafing of the FQIS wiring harness is found, prior to further flight, replace the wire harness with a new wire harness or accomplish the applicable action(s) specified in paragraph (b)(3)(i), (b)(3)(ii), or (b)(3)(iii) of this AD, in accordance with the service bulletin.

(i) For jacket damage only that is less than 1-inch in length with no sign of abrasion to the wire insulation: Install a teflon sleeve over the wiring. At the next scheduled "C" Check, but no later than 15 months after the effective of this AD, repair the wire harness or replace the wire harness with a new wire harness.

(ii) For jacket damage or a harness with an exposed shield or conductor and the insulation of the other wire is not damaged (there can be no broken shield strands if the shield wire is damaged or no broken wire strands if the unshielded wire is damaged): Install a teflon sleeve over the wiring terminal and along the wire to the damaged area.

(iii) For wire harness damage to the wire shield of the shielded wire or to the conductor of the unshielded wire: Splice the wires and install a teflon sleeve over the splice.

Reporting Requirement

(c) Submit a report of inspection findings to Service Bulletin Engineering, Boeing Commercial Airplane Group, P.O. Box 3707, Mail Stop 2H-37, Seattle, Washington 98124-2207; at the applicable time specified in paragraph (c)(1) or (c)(2) of this AD. The report must include all the information specified in paragraph K. of the Accomplishment Instructions of Boeing Alert Service Bulletin 737-28A1168, dated September 26, 2000. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120-0056.

(1) For airplanes on which the inspection required by paragraph (b) of this AD is accomplished after the effective date of this AD: Submit the report within 10 days after performing the inspection.

(2) For airplanes on which the inspection required by paragraph (b) of this AD has been accomplished prior to the effective date of this AD: Submit the report within 10 days after the effective date of this AD.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA PMI, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on September 26, 2000.

John J. Hickey,

*Manager, Transport Airplane Directorate,
Aircraft Certification Service.*

[FR Doc. 00-25327 Filed 10-2-00; 8:45 am]

BILLING CODE 4910-13-P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Chapter II

Portable Bed Rails; Advance Notice of Proposed Rulemaking; Request for Comments and Information

AGENCY: Consumer Product Safety Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Commission has reason to believe that certain portable bed rails may present an unreasonable risk of injury. A portable bed rail is a device intended to be installed on an adult bed to prevent a child from falling out of the bed. At least some bed rails are constructed in a manner that children can become entrapped between the portable bed rail and the bed. This entrapment can result in serious injury or death.

This advance notice of proposed rulemaking (ANPR) initiates a rulemaking proceeding that could result in a rule banning portable bed rails that present an unreasonable risk of injury. This proceeding is commenced under the Federal Hazardous Substances Act.

The Commission solicits written comments concerning the risks of injury associated with portable bed rails, the regulatory alternatives discussed in this notice, other possible ways to address these risks, and the economic impacts of

the various regulatory alternatives. The Commission also invites interested persons to submit an existing standard, or a statement of intent to modify or develop a voluntary standard, to address the risk of injury described in this notice.

DATES: Written comments and submissions in response to this notice must be received by December 4, 2000.

ADDRESSES: Comments should be mailed, preferably in five copies, to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207-0001, or delivered to the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East-West Highway, Bethesda, Maryland; telephone (301) 504-0800. Comments also may be filed by telefacsimile to (301) 504-0127 or by email to cpsc-os@cpsc.gov. Comments should be captioned "ANPR for Portable Bed Rails."

FOR FURTHER INFORMATION CONTACT:

Patricia L. Hackett, Directorate for Engineering Sciences, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504-0494, ext. 1309.

SUPPLEMENTARY INFORMATION:

A. The Product

A portable bed rail (PBR) is a device intended to be installed on an adult bed to prevent a child from falling out of the bed. PBRs are intended for use by children who can get in and out of bed unassisted. (Manufacturers generally recommend them for use with children from two to five years old.) However, many of the reported incidents of injuries/death involved children younger than two years.

A typical PBR generally includes a vertical rail about fifteen inches in height and four feet in length with two or more horizontal arms at right angles to the plane of the rail that are intended to be slipped between the mattress support or box springs and the mattress. The PBR is held under the mattress by a variety of slip-resistant knobs, pads or other means intended to provide frictional resistance. However, this ANPR extends to any other designs that may present an entrapment hazard to young children.

The Commission has information which indicates that PBRs with the following characteristics have resulted in injuries and deaths from entrapment between the PBR and the mattress:

1. A vertical rail or rails intended to prevent a child from falling out of an adult bed.

2. Two or more horizontal arms, slats, or other surfaces at right angles to the

vertical plane of the rail that are intended to be slipped between the mattress support and the mattress.

3. Frictional resistance between the horizontal arms, slats or other surfaces of the PBR and the underside of the mattress provided by slip-resistant knobs, pads, or otherwise as the intended means to prevent outward movement of the PBR.

B. The Risk of Death or Injury

1. Description of Typical Incident

When a PBR is not installed snugly against the mattress or when the rods/bars that go under the mattress slip outward, a child can be entrapped in the resulting space between the PBR and the mattress or between the rods/bars themselves. The result can be an injury or death by asphyxia or strangulation.

2. Death/Injury Data

The Commission has learned of fourteen instances in which a PBR was associated with the death of a child. The cause of death in these incidents was asphyxia or strangulation. In ten of these incidents, death resulted from entrapment between the PBR and mattress. In one case the child slipped between the rails of the PBR and in another the child was found hanging from a protrusion on a PBR. Lastly, two children were found entrapped in the space between the portable bed rail and the headboard/bedpost of the bed. Eleven of the fourteen fatalities associated with PBRs were children under two years of age.

In addition to the fatalities, the Commission is aware of 40 non-fatal incidents. Nine of these resulted in injuries. The age range for the non-fatal incidents is from 4 months to 5 years old.

The incidents that resulted in death are as follows:

a. March 6, 1990—A 7-month old male suffocated when his body slipped feet first through horizontal bars in a PBR and he was pinned head first into the mattress of a single size bed.

b. August 2, 1991—A 3-month old male died of asphyxia when his head became entrapped between the bottom of a PBR and the mattress resulting in his hanging. One of the L-shaped rods had pulled out from under the mattress of the full size bed.

c. October 31, 1991—A 15-month old female died of mechanical asphyxia when her neck and upper body were pinned between a PBR and the mattress. The PBR was installed on the lower bunk of a bunk bed.

d. November 10, 1991—A 14-month old male died of ligature strangulation.

He was found hanging by his shirt collar which caught on a metal clip with a small metal tab on the exterior of a PBR installed on a single size bed.

e. June 23, 1993—A 2-year old female died of positional asphyxia. The child, who had brain deformities, was found with her face inside a 2–3 inch gap between the mattress and the attached side rail of her toddler bed. The PBR was designed with a tubular extension to fit under the mattress to hold it in place. The PBR was secured below the mattress to the bottom slats of the bed with string.

f. October 14, 1994—A 7-month old male died of restrictive asphyxia when his neck became entrapped in a 2–3 inch gap between the end of a retractable bed rail and the bed post of a small twin bed.

g. December 8, 1995—A 2.5-year old female suffering from cerebral palsy died of positional asphyxia. She was found lying on her stomach between the mattress of her “youth size” bed and a PBR. The left side of her face was against the mattress and a plastic sheet that covered the mattress was covering much of the child’s face.

h. March 7, 1996—A 5-month old male died of asphyxia when he became entrapped between a PBR and the mattress on an adult bed. The child was found face down with his face toward the mattress.

i. January 15, 1997—A 19-month old male died of pneumonia due to a cervical injury sustained by hanging when he became entrapped between a PBR and the upper bunk mattress on the wall side of a bunk bed. The victim was found hanging/suspended with the back of his head on the guard rail and his mouth pressed into the mattress.

j. March 18, 1998—A 4-year old mentally retarded male died of asphyxia due to hanging when he became entrapped between a wooden PBR with vertical slats and the mattress of a toddler bed. The victim’s head/neck area was caught at the bottom of the bed rail with his head against the mattress and his torso and feet under the bed.

k. August 17, 1998—A 7-month old male died of asphyxia when his head became entrapped between the headboard of a toddler bed and a youth PBR.

l. November 7, 1998—A 5-month old female died of asphyxiation when she became entrapped between the mattress of a king size bed and a PBR. She was found with her chin on the mattress. The medical examiner in this case believed the child’s neck was resting on the PBR causing strangulation.

m. April 29, 1999—A 4-month old female died of positional asphyxia on a

toddler bed when she apparently rolled between the mattress and the bed rail.

n. May 21, 2000—A 6-month old female died of positional asphyxia on an adult bed. She was found on her side wedged between the mattress and the bed rail.

C. Relevant Statutory Provisions

This proceeding is conducted pursuant to the Federal Hazardous Substances Act (FHSA), 15 U.S.C. 1261 *et seq.* Section 2(f)(1)(D) of the FHSA defines “hazardous substance” to include any toy or other article intended for use by children that the Commission determines, by regulation, presents an electrical, mechanical, or thermal hazard. 15 U.S.C. 1261(f)(1)(D). An article may present a mechanical hazard if its design or manufacture presents an unreasonable risk of personal injury or illness during normal use or when subjected to reasonably foreseeable damage or abuse. Among other things, a mechanical hazard could include a risk of injury or illness “(3) from points or other protrusions, surfaces, edges, openings, or closures, * * * or (9) because of any other aspect of the article’s design or manufacture.” 15 U.S.C. 1261(s).

Under section 2(q)(1)(A) of the FHSA, a toy, or other article intended for use by children, which is or contains a hazardous substance accessible by a child is a “banned hazardous substance.” 15 U.S.C. 1261(q)(1)(A).

Sections 3(f) through 3(i) of the FHSA, 15 U.S.C. 1262(f)–(i), govern a proceeding to promulgate a regulation determining that a toy or other children’s article presents an electrical, mechanical, or thermal hazard. As provided in section 3(f), this proceeding is commenced by issuance of this ANPR. After considering any comments submitted in response to this ANPR, the Commission will decide whether to issue a proposed rule and a preliminary regulatory analysis in accordance with section 3(h) of the FHSA. If a proposed rule is issued, the Commission would then consider the comments received in response to the proposed rule in deciding whether to issue a final rule and a final regulatory analysis. 15 U.S.C. 1262(i).

D. Regulatory Alternatives

One or more of the following alternatives could be used to reduce the identified risks associated with PBRs.

1. *Mandatory rule.* The Commission could issue a rule declaring certain PBRs to be banned hazardous substances. This rule could define the banned products in terms of physical or performance characteristics, or both.

2. *Labeling rule.* The Commission could issue a rule banning PBRs that did not contain specified warnings and instructions.

3. *Voluntary standard.* If the industry developed, adopted, and substantially conformed to an adequate voluntary standard, the Commission could defer to the voluntary standard in lieu of issuing a mandatory rule.

E. Existing Standards

The Commission is not aware of any promulgated state, voluntary, foreign, international, or other standard dealing with the described risk of injury or death. In February 1998, the CPSC staff requested that ASTM develop a provisional standard for PBRs to address the hazard of entrapment-related deaths. In May 1999, CPSC staff drafted proposed performance requirements and submitted them to ASTM for consideration. As of May 2000, the ASTM Portable Bed Rail Subcommittee had not balloted a proposed performance standard for these products.

F. Economic Considerations

1. PBR Sales and Numbers Available for Use

Based on information gathered by the CPSC Office of Compliance, eleven firms produced a total of approximately 7.7 million PBRs during the period from January 1988 to July 14, 1998. Subsequent sales (1998 and 1999) were reportedly stable. Thus, based on available information, approximately 733,000 units are sold per year. The retail cost of a PBR is in the range of \$15–\$30.

No information is available on the average product life of a PBR. CPSC staff estimate that for the period of first use an expected life of two years would be appropriate. However, some units could see use with subsequent children so four years is estimated as a reasonable upper bound on the expected useful life of a PBR. Assuming an expected useful life of four years and stable sales, there may be as many as approximately 3 million PBRs in use at any one given time (733,000 PBRs sold per year x 4 years).

2. Suppliers

CPSC staff has identified eleven firms that marketed PBRs in the United States during the period 1980–1998. There may be other manufacturers or importers that the staff has not identified.

3. Substitutes

Substitutes for PBRs include beds equipped with fixed side rails that are

designed for children in the two to five year old age range or differently designed PBRs that do not pose an entrapment hazard.

4. Cost Effectiveness Considerations

The CPSC is aware of 14 deaths since 1990 that are directly attributable to PBRs, for an average of 1.34 deaths per year over that period. At a statistical value of life of \$5 million, the aggregate cost to society from PBR-attributable deaths is approximately \$6.7 million annually. This estimate does not account for the costs associated with non-fatal PBR-related injuries.

Using the death rate and annual sales estimates noted above, CPSC staff calculate that the expected societal cost of those deaths over the life of a PBR is approximately \$9 per PBR. Thus, if product improvements were 100% effective in preventing the predicted deaths, a cost per bed rail for the improvements of \$9 would be economically justified. (The \$9 per bed rail societal cost represents between 30% and 60% of the retail price of a PBR.)

G. Solicitation of Information and Comments

This ANPR is the first step of a proceeding that could result in a mandatory rule for PBRs to address the described risk of injury or death. All interested persons are invited to submit to the Commission their comments on any aspect of the alternatives discussed above. In particular, CPSC solicits the following additional information:

1. The models and numbers of PBRs produced for sale in the U.S. each year from 1990 to the present;
2. The names and addresses of manufacturers and distributors of PBRs;
3. The expected useful life of PBRs;
4. Comparisons of the utility obtained from PBRs versus any available substitute products;
5. The number of persons injured or killed by the hazards associated with PBRs;
6. The circumstances under which these injuries and deaths occur, including the ages of the victims;
7. An explanation of designs that could be adapted to PBRs to reduce the described risk of injury;
8. Physical or performance characteristics of the product that could or should not be used to define which products might be subject to a rule;
9. The costs to manufacturers involved in either redesigning PBRs to remove the risk or removing PBRs from the market;
10. Other information on the potential costs and benefits of potential rules;

11. Steps that have been taken by industry or others to reduce the risk of injury from the product;

12. The likelihood and nature of any significant economic impact of a rule on small entities;

13. The costs and benefits of mandating a banning, labeling, or instructions requirement.

Also, in accordance with section 3(f) of the FHSA, the Commission solicits:

1. Written comments with respect to the risk of injury identified by the Commission, the regulatory alternatives being considered, and other possible alternatives for addressing the risk.

2. Any existing standard or portion of a standard which could be issued as a proposed regulation.

3. A statement of intention to modify or develop a voluntary standard to address the risk of injury discussed in this notice, along with a description of a plan (including a schedule) to do so.

Comments should be mailed, preferably in five copies, to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207–0001, or delivered to the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East-West Highway, Bethesda, Maryland 20814; telephone (301) 504–0800. Comments also may be filed by telefacsimile to (301) 504–0127 or by email to cpsc-os@cpsc.gov. Comments should be captioned “ANPR for Portable Bed Rails.” All comments and submissions should be received no later than December 4, 2000.

Dated: September 27, 2000.

Todd A. Stevenson,

Deputy Secretary, Consumer Product Safety Commission.

[FR Doc. 00–25279 Filed 10–2–00; 8:45 am]

BILLING CODE 6355–01–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

RIN 0960–AF13

Collection of Supplemental Security Income (SSI) Overpayments From Social Security Benefits

AGENCY: Social Security Administration.

ACTION: Proposed rules.

SUMMARY: We propose to revise our regulations dealing with the recovery of overpayments under the Supplemental Security Income (SSI) program under title XVI of the Social Security Act (the Act). Under the proposed revisions, we would modify our regulations to permit SSA to recover SSI overpayments by

adjusting the amount of social security benefits payable to the individual under title II of the Act. This collection practice would be limited to individuals who are not currently eligible to receive any cash payments under any provision of title XVI or State supplementary cash payments that we administer. Also, the amount of the title II benefits withheld in a month to recover the title XVI overpayment would not exceed 10 percent of the amount payable under title II unless the overpaid person requests us to withhold a higher amount or the overpaid person (or his or her spouse) willfully misrepresented or concealed material information in connection with the overpayment. In a case involving willful misrepresentation or concealment, the entire title II benefit amount will be withheld to recover the overpayment. These revisions would permit SSA to recover SSI overpayments from title II benefits payable to the overpaid individual when SSI cash benefits are not payable. These revisions are necessary to implement section 1147 of the Act.

DATES: To be sure your comments are considered, we must receive them no later than December 4, 2000.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, P.O. Box 1585, Baltimore, Maryland 21235-1585, sent by telefax to (410) 966-2830, sent by e-mail to regulations@ssa.gov or delivered to the Office of Process and Innovation Management, Social Security Administration, 2109 West Low Rise Building, 6401 Security Boulevard, Baltimore, Maryland 21235-6401.

FOR FURTHER INFORMATION CONTACT: Robert Augustine, Social Insurance Specialist, Office of Process and Innovation Management, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235-6401, (410) 966-5121 or TTY (410) 966-5609 for information about these rules. For information on eligibility or claiming benefits, call our national toll-free number, 1-800-772-1213 or TTY 1-800-325-0778.

SUPPLEMENTARY INFORMATION: Under the law in effect prior to the enactment of Pub. L. 105-306 on October 28, 1998, if an individual received an SSI overpayment and failed to refund the full overpayment amount, SSA was authorized to recover the overpayment by adjusting future SSI payments due the recipient or his or her eligible spouse. If the overpaid person was not receiving SSI payments but was entitled to benefits under title II of the Act, he or she generally could elect voluntarily to have the overpayment recovered by

adjusting the title II benefits. If an overpaid individual was no longer entitled to SSI payments, we could refer the overpayment to the Department of the Treasury for offset against any Federal tax refund due that individual.

Section 8 of Pub. L. 105-306 added new section 1147 to the Act, permitting SSA to use an additional collection tool to recover SSI overpayments. Under section 1147, SSA may recover SSI overpayments by adjusting the amount of any benefits payable to the overpaid individual under title II of the Act, without the consent of the individual. Throughout the remainder of this preamble, this type of overpayment recovery is referred to as "cross-program recovery."

Section 1147 limits the use of cross-program recovery to SSI overpayments made to individuals who are not currently eligible to receive cash payments, including State supplementary payments, under title XVI or under section 212(b) of Pub. L. 93-66. Also, section 1147 limits the amount of the SSI overpayment that may be recovered in any month through cross-program recovery to 10 percent of the benefit amount payable under title II in any month, unless the overpaid person requests that SSA withhold a higher amount or unless the overpaid person or his or her spouse willfully misrepresented or concealed material information in connection with the overpayment. If there is willful misrepresentation or concealment, section 1147 permits SSA to recover the overpayment by withholding 100 percent of the title II benefit payable.

Explanation of Proposed Changes

We propose to add to our regulations new § 416.572 setting forth our rules on cross-program recovery. This new section would:

- Define certain terms;
- Explain the conditions for imposing cross-program recovery;
- Explain the rights of the overpaid individual to request review of our determination that he or she still owes us the overpayment balance; and
- Explain the rules for determining the amount to be withheld from the individual's title II benefits.

Specifically, in paragraph (a) of proposed § 416.572, we would define the following terms:

- "Cross-program recovery" would be defined as the process we will use to collect SSI overpayments by adjusting title II benefits payable in a month.
- "Benefits payable in a month" would be defined as the amount of title II benefits a person would actually receive in a given month. Under our

proposed definition, "benefits payable in a month" would include any past due benefits a person would receive, but would not include any amounts withheld from the person's benefits under the deductions or reductions listed in § 404.401(a) or (b) of our regulations. The proposed definition also includes an example of how we determine the "benefits payable in a month."

- "Not currently eligible for SSI cash benefits" would mean that a person is receiving no cash payments, including State supplementary payments, under title XVI of the Act or under section 212(b) of Pub. L. 93-66.

In paragraph (b) of proposed § 416.572, we would explain that we may use cross-program recovery to collect SSI overpayments if the overpaid person is not currently receiving SSI cash benefits and is receiving benefits under title II of the Act. Thus, if a person whose title II benefits are being adjusted to recover an SSI overpayment again becomes eligible for SSI benefits, cross-program recovery would end with the month in which SSI cash benefits resume. When SSI benefits become payable to the overpaid person, we would resume the monthly adjustment of SSI payments to collect the overpayment. We would not start cross-program recovery if the overpaid person is refunding the title XVI overpayment by regular monthly installments or we are recovering a title II overpayment by withholding that person's title II benefits.

Paragraph (c) of proposed § 416.572 would list the information that we would include in the notice we would send to a person whose title II benefits would be subject to cross-program recovery. The notice would inform the person that he or she owes a specific SSI overpayment balance, that we will be using cross-program recovery to collect that balance and that we will withhold a specific amount from the title II benefits. The notice would state that the person may ask us to review our determination that he or she still owes the overpayment balance. Unless the overpaid person or that person's spouse willfully misrepresented or concealed material information in connection with the overpayment, the notice would also state that the person may request that we withhold from the title II benefits a different amount than the amount stated in the notice.

Paragraph (d) of proposed § 416.572 would explain that we will begin to withhold no sooner than 30 days after the date of the notice. If the individual pays the entire overpayment balance within that 30-day period, we will not

impose cross-program recovery. If within the 30-day period the person asks us to review the determination that he or she still owes us the overpayment balance, we will not begin cross-program recovery until we review the matter and notify the person of our decision. If within the 30-day period, the person requests that we withhold a different amount, we will not begin cross-program recovery until we determine the amount we will withhold.

Paragraph (e) of proposed § 416.572 would explain that we will generally collect the overpayment at the rate of 10 percent of the title II benefits payable in any month. However, we would collect at a different rate if the person requests, and we approve, a different rate of withholding or if the overpaid person (or his or her spouse) willfully misrepresented or concealed material information in connection with the overpayment. If there has been willful misrepresentation or concealment of material information in connection with the overpayment, we would recover the overpayment by withholding at the rate of 100 percent of the title II benefits payable. We would not collect at a lesser rate.

Other Revisions

We propose to revise § 404.401(c) to explain that we may adjust a person's title II benefits to recover an SSI overpayment using cross-program recovery.

We propose to revise § 416.570 to eliminate the reference to voluntary withholding of an SSI overpayment from title II benefits. Under section 1147 of the Act, we now have authority to use cross-program recovery to recover title XVI overpayments without the consent of the overpaid person.

Clarity of This Regulation

Executive Order (E.O.) 12866 and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. In addition to your substantive comments on these proposed rules, we invite your comments on how to make these proposed rules easier to understand.

For example:

- Have we organized the material to suit your needs?
- Are the requirements in the rules clearly stated?
- Do the rules contain technical language or jargon that is unclear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rules easier to understand?
- Would more (but shorter) sections be better?

- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rules easier to understand?

Electronic Version

The electronic file of this document is available on the date of publication in the **Federal Register** on the Internet site for the Government Printing Office: http://www.access.gpo.gov/su_docs/aces/aces140.html. It is also available on the Internet site for SSA (i.e., SSA Online): <http://www.ssa.gov/>.

Regulatory Procedures

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these proposed regulations meet the criteria for a significant regulatory action under Executive Order 12866. Thus, they are subject to OMB review. However, the amounts of the savings or costs involved do not cross the threshold for an economically significant regulation as defined in E.O. 12866. The program savings from increased collections as a result of implementation of section 8 of Pub. L. 105-306 are \$15 million in each of fiscal years (FY) 2001 through 2003; \$40 million in FY 2004; and \$30 million in FY 2005 for a total increase of \$115 million over 5 years. The administrative savings estimate for FYs 2001 through 2005 is less than \$5 million.

Regulatory Flexibility Act

We certify that these proposed rules will not have a significant economic impact on a substantial number of small entities because they affect only individuals. Thus, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These proposed regulations would impose no new reporting or recordkeeping requirements requiring OMB clearance. In fact, these proposed rules would decrease the paperwork burden on the public by 833 burden hours per year. This is because, under the proposed rules, the public would no longer complete Form SSA-730-U2 (Request To Have Supplemental Security Income Overpayment Withheld From My Social Security Benefits) which provides SSA with the overpaid person's request that SSA collect a title XVI overpayment from the person's title II benefits.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security-Disability Insurance; 96.006, Supplemental Security Income)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Dated: June 9, 2000.

Kenneth S. Apfel,

Commissioner of Social Security.

For the reasons set forth in the preamble, we propose to amend subpart E of part 404 and subpart E of part 416 of Chapter III of Title 20, Code of Federal Regulations as follows:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950—)

1. The authority citation for subpart E of part 404 is revised to read as follows:

Authority: Secs. 202, 203, 204(a) and (e), 205(a) and (c), 222(b), 223(e), 224, 225, 702(a)(5) and 1147 of the Social Security Act (42 U.S.C. 402, 403, 404(a) and (e), 405(a) and (c), 422(b), 423(e), 424a, 425, 902(a)(5) and 1320b-17).

2. Section 404.401 is amended by revising paragraph (c) to read as follows:

§ 404.401 Deduction, reduction, and nonpayment of monthly benefits or lump-sum death payments.

* * * * *

(c) *Adjustments.* We may adjust your benefits if you receive more or less than the correct amount due under title II of the Act. We may also adjust your benefits if you received more than the correct amount due under title XVI of the Act. For the title II rules on adjustments to your benefits, see subpart F of this part. For the rules on adjusting your benefits to recover title XVI overpayments, see § 416.572 of this chapter.

* * * * *

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

3. The authority citation for subpart E of part 416 is revised to read as follows:

Authority: Secs. 702(a)(5), 1147, 1601, 1602, 1611(c) and (e), and 1631(a)-(d) and (g) of the Social Security Act (42 U.S.C. 902(a)(5), 1320b-17, 1381, 1381a, 1382(c) and (e), and 1383(a)-(d) and (g)); 31 U.S.C. 3720A.

4. Section 416.570 is amended by revising the third sentence to read as follows:

§ 416.570 Adjustment-general rule.

* * * Absent a specific request from the person from whom recovery is sought, no overpayment made under title II or XVIII of the Act will be recovered by adjusting SSI benefits.
* * *

5. Section 416.572 is added to read as follows:

§ 416.572 Are title II benefits subject to adjustment to recover title XVI overpayments?

(a) *Definitions*—(1) *Cross-program recovery*. Cross-program recovery is the process that we will use to collect title XVI overpayments from benefits payable to you in a month under title II of the Social Security Act.

(2) *Benefits payable in a month*. For purposes of this section, benefits payable in a month means the amount of title II benefits you would actually receive in that month. It includes your monthly benefit and any past due benefits after any reductions or deductions listed in § 404.401(a) and (b) of this chapter.

Example: A person is entitled to monthly title II benefits of \$1000. The first benefit payment the person would receive includes past-due benefits of \$1000. The amount of benefits payable in that month for purposes of cross-program recovery is \$2000. The monthly benefit payable for subsequent months is \$1000. If \$200 would be deducted from the person's title II benefits in a later month because of excess earnings as described in §§ 404.415 and 404.416 of this chapter, the benefit payable in that month for purposes of cross-program recovery would be \$800.

(3) *Not currently eligible for SSI cash benefits*. This means that a person is not receiving any cash payment, including State supplementary payments, under any provision of title XVI of the Act or under section 212(b) of Pub. L. 93-66 (42 U.S.C. 1382 note).

(b) *When we may collect title XVI overpayments using cross-program recovery*. (1) We may use cross-program recovery to collect a title XVI overpayment you owe if:

(i) You are not currently eligible for SSI cash benefits, and
(ii) You are receiving title II benefits.
(2) We will not start cross-program recovery if:

(i) You are refunding your title XVI overpayment by regular monthly installments, or
(ii) We are recovering a title II overpayment by adjusting your title II benefits under § 404.502 of this chapter.

(c) *Notice you will receive*. Before we collect an overpayment from you using

cross-program recovery, we will send you a written notice that tells you the following information:

(1) We have determined that you owe a specific overpayment balance that can be collected by cross-program recovery;

(2) We will withhold a specific amount from the title II benefits payable to you in a month (see paragraph (e) of this section);

(3) You may ask us to review this determination that you still owe this overpayment balance; and

(4) You may request that we withhold a different amount (the notice will not include this information if paragraph (e)(2) of this section applies).

(d) *When we will begin cross-program recovery*. We will begin collecting the overpayment balance by cross-program recovery no sooner than 30 calendar days after the date of the notice described in paragraph (c) of this section.

(1) If within that 30-day period you pay us the full overpayment balance stated in the notice, we will not begin cross-program recovery.

(2) If within that 30-day period you ask us to review our determination that you still owe us this overpayment balance, we will not begin cross-program recovery before we review the matter and notify you of our decision in writing.

(3) If within that 30-day period you ask us to withhold a different amount than the amount stated in the notice, we will not begin cross-program recovery until we determine the amount we will withhold. This paragraph does not apply when paragraph (e)(2) of this section applies.

(e) *Rate of withholding*. (1) We will collect the overpayment at the rate of 10 percent of the title II benefits payable to you in any month, unless:

(i) You request and we approve a different rate of withholding, or

(ii) You or your spouse willfully misrepresented or concealed material information in connection with the overpayment.

(2) If you or your spouse willfully misrepresented or concealed material information in connection with the overpayment, we will collect the overpayment at the rate of 100 percent of the title II benefits payable in any month. We will not collect at a lesser rate. (See § 416.571 for what we mean by concealment of material information.)

[FR Doc. 00-25184 Filed 10-2-00; 8:45 am]

BILLING CODE 4191-02-U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-108522-00]

RIN 1545-AY25

Recognition of Gain on Certain Transfers to Certain Foreign Trusts and Estates; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains a correction to a notice of proposed rulemaking that was published in the **Federal Register** on Monday, August 7, 2000 (65 FR 48198) relating to the recognition of gain on certain transfers to certain foreign trusts and estates.

FOR FURTHER INFORMATION CONTACT: Karen A. Rennie Quarrie at (202) 622-3880 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking that is the subject of this correction is under section 684 of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking (REG-108522-00), that was the subject of FR Doc. 00-19896, is corrected as follows:

§ 1.684-3 [Corrected]

On page 48202, column 1, § 1.684-3(f), the first line of *Example 1*, the language "Example 1. Transfer to owner trust. In" is corrected to read "Example 1. Transfer to grantor trust. In".

Cynthia E. Grigsby,

Chief, Regulations Unit, Office of Special Counsel (Modernization and Strategic Planning).

[FR Doc. 00-25290 Filed 10-2-00; 8:45 am]

BILLING CODE 4830-01-P

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Parts 1190 and 1191

RIN 3014-AA20

Americans With Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities; Architectural Barriers Act (ABA) Accessibility Guidelines

AGENCY: Architectural and
Transportation Barriers Compliance
Board.

ACTION: Proposed rule; meetings.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) will hold two informational meetings to provide the public with additional opportunities to discuss proposed requirements relating to automated teller machines, reach ranges, and captioning equipment included in its Notice of Proposed Rulemaking to amend the accessibility guidelines for buildings and facilities covered by the Americans with Disabilities Act (ADA) of 1990 and the Architectural Barriers Act (ABA) of 1968. The meetings will be held on the dates and at the locations noted below.

DATES: The Access Board will hold an informational meeting on access to automated teller machines on October 24, 2000 from 8:30 a.m. to 5:30 p.m. and an informational meeting on captioning equipment on October 25, 2000 from 8:30 a.m. to 10:30 a.m. and reach ranges on October 25, 2000 from 10:30 a.m. to 5:30 p.m.

ADDRESSES: The meetings will be held at the Hilton Garden Inn, 815 14th Street, NW., in Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Marsha Mazz, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC 20004-1111. Telephone number (202) 272-5434 extension 121 (Voice); (202) 272-5449 (TTY). These are not toll-free numbers. Electronic mail address: mazz@access-board.gov. This document is available in alternate formats (cassette tape, Braille, large print, or computer disk) upon request.

SUPPLEMENTARY INFORMATION: On November 16, 1999 the Architectural and Transportation Barriers Compliance Board (Access Board) published a Notice of Proposed Rulemaking to amend the accessibility guidelines for the Americans with Disabilities Act (ADA) of 1990 and the Architectural Barriers Act (ABA) of 1968. 64 FR 62248

(November 16, 1999). Proposed section 707 includes several provisions that may affect access to automated teller machines (ATMs), point of sale machines, and interactive transaction machines by people who are blind or have vision impairments. Proposed section 308 includes provisions for maximum high unobstructed reach. While section 707 is based on the American National Standard for Accessible and Usable Buildings and Facilities, ICC/ANSI A117.1-1998, the Board departed from this consensus standard with regard to reach ranges. In the proposed rule, the Board sought information on different means of providing captioning for movie theaters (Question 36). The Board is interested in receiving more information about various types of captioning as it relates to the built environment.

The Board wishes to provide affected parties the opportunity to share their views and expertise directly with the Board on these issues. Specific areas of inquiry are:

ATMs

- What are the performance expectations of people who are blind or have a vision impairment?
- What functions are currently accessible in audible format and on what types of devices?
- What functions cannot be made accessible in audible format and why?
- What are the hardware and software costs associated with audible output?
- What does the industry hope to gain from a "performance standard"?
- What effect would a 48 inch maximum reach have on ATMs, point of sale machines, and interactive transaction machines?

Reach Ranges

- What manufactured equipment cannot provide a 48 inch high side reach and why?
- Are there newly constructed building elements that would be substantially affected in terms of usability by lowering the high side reach from 54 inches to 48 inches?
- What is the experience in those States where the ICC/ANSI A117.1-1998 standard requiring the side reach to be no higher than 48 inches is used?

Captioning for Movie Theaters

- What technical provisions are necessary to facilitate or augment the use of auxiliary aids such as captioning and videotext displays?
- What are the various options for providing captioning that would best facilitate effective communication?
- If provisions for conduit, electrical service, screen anchoring devices at

seats, or other requirements that make providing accessible communication possible in the built environment are required in the final rule, how specific should those provisions be?

Members of the public are encouraged to share their views on these subjects with the Board. Following the informational meetings, the Board will determine the provisions to be included in the final rule. The informational meetings will be informal and open to the public.

Members of the public are encouraged to contact Marsha Mazz at (202) 272-5434 extension 121 (Voice), (202) 272-5449 (TTY), or electronic mail mazz@access-board.gov to preregister to attend the informational meetings.

All meetings are accessible to persons with disabilities. Sign language interpreters and an assistive listening system will be available at the meetings. Persons attending the informational meetings are requested to refrain from using perfume, cologne, and other fragrances for the comfort of other participants.

Lawrence W. Roffee,

Executive Director.

[FR Doc. 00-25382 Filed 10-2-00; 8:45 am]

BILLING CODE 8150-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Part 1180

[STB Ex Parte No. 582 (Sub-No. 1)]

Major Rail Consolidation Procedures

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of proposed rulemaking

SUMMARY: The Surface Transportation Board (Board) seeks public comment on proposed modifications to its regulations governing proposals for major rail consolidations. These proposed new rules would substantially increase the burden on applicants to demonstrate that a proposed transaction is in the public interest, requiring them, among other things, to demonstrate that the transaction would enhance competition as an offset to negative impacts resulting from service disruptions and competitive harms likely to be caused by the merger.

DATES: Comments are due on November 17, 2000. Replies are due on December 18, 2000. Rebuttal submissions are due on January 11, 2001.

ADDRESSES: An original and 25 copies of all paper documents filed in this

proceeding must refer to STB Ex Parte No. 582 (Sub-No. 1) and must be sent to: Surface Transportation Board, Office of the Secretary, Case Control Unit, Attn: STB Ex Parte No. 582 (Sub-No. 1), 1925 K Street, NW., Washington, DC 20423-0001.

In addition to submitting an original and 25 copies of all paper documents, parties must submit to the Board, on 3.5-inch IBM-compatible floppy diskettes (in, or convertible by and into, WordPerfect 9.0 format), an electronic copy of each such paper document. Any party may seek a waiver from the electronic submission requirement. Documents transmitted by facsimile (FAX) or electronic mail (e-mail) will not be accepted.

FOR FURTHER INFORMATION CONTACT: Julia M. Farr, (202) 565-1613. [TDD for the hearing impaired: 1-800-877-8339.]

SUPPLEMENTARY INFORMATION:

Additional information is contained in the Board's decision. A printed copy of the Board's decision is available for a fee by contacting: Da-To-Da Office Solutions, Room 405, 1925 K Street, NW., Washington, DC 20006, telephone (202) 466-5530. The Board's decision is also available for viewing and downloading on the Board's website at "www.stb.dot.gov."

Initial Regulatory Flexibility Analysis: The Board preliminarily concludes that the proposed revisions to its regulations, if adopted, will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). These rules will create additional filing requirements only for Class I applicants, which are very large rail carriers. At the same time the Board has given increased weight to issues and concerns of smaller railroads and shippers, a change that should benefit these small entities.

The Board nevertheless seeks public input on whether the proposed revisions to its regulations would have significant economic impacts on a substantial number of small entities. If submissions made by the parties to this proceeding provide information that there would be significant economic impacts on a substantial number of small entities, the Board will prepare a regulatory flexibility analysis at the final rule stage.

Environmental and Energy Considerations: The Board preliminarily concludes that the proposed action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Request for Comments, Replies, and Rebuttal: The Board invites comments,

replies, and/or rebuttal on all aspects of the proposed regulations, including impacts on small entities and effects on either the quality of the human environment or the conservation of energy resources.

Final Stage of This Proceeding: After considering the comments due on November 17, 2000, the replies due on December 18, 2000, and the rebuttal due on January 11, 2001, the Board will issue final rules by June 11, 2001.

Authority: 49 U.S.C. 721 and 11323-11325.

List of Subjects in 49 CFR Part 1180

Administrative practice and procedure, Bankruptcy, Railroads, Reporting and recordkeeping requirements.

Decided: September 25, 2000.

By the Board, Chairman Morgan, Vice Chairman Burkes, and Commissioner Clyburn. Vice Chairman Burkes and Commissioner Clyburn commented with separate expressions.

Vernon A. Williams,
Secretary.

For the reasons set forth in the preamble, Title 49, Subtitle B, Chapter X, Part 1180 of the Code of Federal Regulations is proposed to be amended as follows:

PART 1180—RAILROAD ACQUISITION, CONTROL, MERGER, CONSOLIDATION PROJECT, TRACKAGE RIGHTS, AND LEASE PROCEDURES

1. The authority citation for part 1180 continues to read as follows:

Authority: 5 U.S.C. 553 and 559; 11 U.S.C. 1172; 49 U.S.C. 721, 10502, 11323-11325.

2. Section 1180.0 is proposed to be revised to read as follows:

§ 1180.0 Scope and purpose.

The regulations in this subpart set out the information to be filed and the procedures to be followed in control, merger, acquisition, lease, trackage rights, and any other consolidation transaction involving more than one railroad that is initiated under 49 U.S.C. 11323.

Section 1180.2 separates these transactions into four types: *Major*, *significant*, *minor*, and *exempt*. The informational requirements for these types of transactions differ. Before an application is filed, the designation of type of transaction may be clarified or certain of the information required may be waived upon petition to the Board. This procedure is explained in § 1180.4. The required contents of an application are set out in §§ 1180.6 (general information supporting the transaction),

1180.7 (competitive and market information), 1180.8 (operational information), 1180.9 (financial data), 1180.10 (service assurance plans), and 1180.11 (additional information needs for transnational mergers). A *major* application must contain the information required in §§ 1180.6(a), 1180.6(b), 1180.7(a), 1180.7(b), 1180.8(a), 1180.8(b), 1180.9, 1180.10, and 1180.11. A *significant* application must contain the information required in §§ 1180.6(a), 1180.6(c), 1180.7(a), 1180.7(c), and 1180.8(b). A *minor* application must contain the information required in §§ 1180.6(a) and 1180.8(c).

Procedures (including time limits, filing requirements, participation requirements, and other matters) are contained in § 1180.4. All applications must comply with the Board's Rules of General Applicability, 49 CFR parts 1100 through 1129, unless otherwise specified. These regulations may be cited as the Railroad Consolidation Procedures.

3. Section 1180.1 is proposed to be revised to read as follows:

§ 1180.1 General policy statement for merger or control of at least two Class I railroads.

(a) *General.* To meet the needs of the public and the national defense, the Surface Transportation Board seeks to ensure balanced and sustainable competition in the railroad industry. The Board recognizes that the railroad industry (including Class II and III carriers) is a network of competing and complementary components, which in turn is part of a broader transportation infrastructure that also embraces the nation's highways, waterways, ports, and airports. The Board welcomes private sector initiatives that enhance the capabilities and the competitiveness of this transportation infrastructure. Although mergers of Class I railroads may advance our nation's economic growth and competitiveness through the provision of more efficient and responsive transportation, the Board does not favor consolidations that reduce the railroad and other transportation alternatives available to shippers unless there are substantial and demonstrable public benefits to the transaction that cannot otherwise be achieved. Such public benefits include improved service, enhanced competition, and greater economic efficiency. The Board also will look with disfavor on consolidations under which the controlling entity does not assume full responsibility for carrying out the controlled carrier's common

carrier obligation to provide adequate service upon reasonable demand.

(b) *Consolidation criteria.* The Board's consideration of the merger or control of at least two Class I railroads is governed by the public interest criteria prescribed in 49 U.S.C. 11324 and the rail transportation policy set forth in 49 U.S.C. 10101. In determining the public interest, the Board must consider the various goals of effective competition, carrier safety and efficiency, adequate service for shippers, environmental safeguards, and fair working conditions for employees. The Board must ensure that any approved transaction will promote a competitive, efficient, and reliable national rail system.

(c) *Public interest considerations.* The Board believes that mergers serve the public interest only when substantial and demonstrable gains in important public benefits—such as improved service, enhanced competition, and greater economic efficiency—outweigh any anticompetitive effects, potential service disruptions, or other merger-related harms. Although the Board cannot rule out the possibility that further consolidation of the few remaining Class I carriers could result in efficiency gains and improved service, the Board believes additional consolidation in the industry is also likely to result in a number of anticompetitive effects, such as loss of geographic competition, that are increasingly difficult to remedy directly or proportionately. Additional consolidations could also result in service disruptions during the system integration period. To maintain a balance in favor of the public interest, merger applications must include provisions for enhanced competition. Unless merger applications are so framed, approval of proposed combinations where both carriers are financially sound will likely cause the Board to make broad use of the powers available to it in 49 U.S.C. 11324(c) to condition its approval to preserve and enhance competition. When evaluating the public interest, the Board will also consider whether the benefits claimed by applicants could be realized by means other than the proposed consolidation. The Board believes that other private sector initiatives, such as joint marketing agreements and interline partnerships, can produce many of the efficiencies of a merger while risking less potential harm to the public.

(1) *Potential benefits.* By eliminating transaction cost barriers between firms, increasing the productivity of investment, and enabling carriers to lower costs through economies of scale, scope, and density, mergers can

generate important public benefits such as improved service, enhanced competition, and greater economic efficiency. A merger can strengthen a carrier's finances and operations. To the extent that a merged carrier continues to operate in a competitive environment, its new efficiencies will be shared with shippers and consumers. Both the public and the consolidated carrier can benefit if the carrier is able to increase its marketing opportunities and provide better service. A merger transaction can also improve existing competition or provide new competitive opportunities, and such enhanced competition will be given substantial weight in our analysis. Applicants shall make a good faith effort to calculate the net public benefits their merger will generate, and the Board will carefully evaluate such evidence. To ensure that applicants have no incentive to exaggerate these projected benefits to the public, the Board expects applicants to propose additional measures that the Board might take if the anticipated public benefits fail to materialize in a timely manner.

(2) *Potential harm.* The Board recognizes that consolidation can impose costs as well as benefits. It can reduce competition both directly and indirectly in particular markets, including product markets and geographic markets. Consolidation can also threaten essential services and the reliability of the rail network. In analyzing these impacts we must consider, but are not limited by, the policies embodied in the antitrust laws.

(i) *Reduction of competition.* Although in specific markets railroads operate in a highly competitive environment with vigorous intermodal competition from motor and water carriers, mergers can deprive shippers of effective options. Intramodal competition is reduced when two carriers serving the same origins and destinations merge. Competition in product and geographic markets can also be eliminated or reduced by end-to-end mergers. Any railroad combination entails a risk that the merged carrier will acquire and exploit increased market power. Applicants shall propose remedies to mitigate and offset competitive harms. Applicants shall also explain how they would at a minimum preserve competitive options such as those involving the use of major existing gateways, build-outs or build-ins, and the opportunity to enter into contracts for one segment of a movement as a means of gaining the right separately to pursue rate relief for the remainder of the movement.

(ii) *Harm to essential services.* The Board must ensure that essential freight,

passenger, and commuter rail services are preserved. An existing service is essential if there is sufficient public need for the service and adequate alternative transportation is not available. The Board's focus is on the ability of the nation's transportation infrastructure to continue to provide and support essential services. Mergers should strengthen, not undermine, the ability of the rail network to advance the nation's economic growth and competitiveness, both domestically and internationally. The Board will consider whether projected shifts in traffic patterns could undermine the ability of the various network links (including Class II and Class III rail carriers and ports) to sustain essential services.

(iii) *Transitional service problems.* Experience shows that significant service problems can arise during the transitional period when merging firms integrate their operations, even after applicants take extraordinary steps to avoid such disruptions. Because service disruptions harm the public, the Board, in its determination of the public interest, will weigh the likelihood of transitional service problems. In addition, under paragraph (h) of this section, the Board will require applicants to provide a detailed service assurance plan. Applicants also should explain how they will cooperate with other carriers in overcoming natural disasters or other serious service problems during the transitional period and afterwards.

(iv) *Enhanced competition.* To offset harms that would not otherwise be mitigated, applicants shall explain how the transaction and conditions they propose will enhance competition.

(d) *Conditions.* The Board has broad authority under 49 U.S.C. 11324(c) to impose conditions on consolidations, including divestiture of parallel tracks or requiring the granting of trackage rights and access to other facilities. The Board will condition the approval of Class I combinations to mitigate or offset harm to the public interest, and will carefully consider conditions proposed by applicants in this regard. The Board will impose conditions that are operationally feasible and produce net public benefits so as not to undermine or defeat beneficial transactions by creating unreasonable operating, financial, or other problems for the combined carrier. Conditions are generally not appropriate to compensate parties who may be disadvantaged by increased competition. In this regard, the Board expects that any merger of Class I carriers will create some anticompetitive effects that are difficult to mitigate through appropriate

conditions, and that transitional service disruptions may temporarily negate any shipper benefits. Therefore, to offset these harms, applicants will be required to propose conditions that will not simply preserve but also enhance competition. The Board seeks to enhance competition in ways that strengthen and sustain the rail network as a whole (including that portion of the network operated by Class II and III carriers).

(e) *Labor protection.* The Board is required to provide adequate protection to the rail employees of applicants who are affected by a consolidation. The Board supports early notice and consultation between management and the various unions, leading to negotiated implementing agreements, which the Board strongly favors. Otherwise, the Board respects the sanctity of collective bargaining agreements and will look with extreme disfavor on overrides of collective bargaining agreements except to the very limited extent necessary to carry out an approved transaction. The Board will review negotiated agreements to assure fair and equitable treatment of all affected employees. Absent a negotiated agreement, the Board will provide for protection at the level mandated by law (49 U.S.C. 11326(a)), and if unusual circumstances are shown, more stringent protection will be provided to ensure that employees have a fair and equitable arrangement.

(f) *Environment and safety.* (1) We encourage negotiated agreements between railroad-applicants and affected communities, including groups of neighborhood communities and other entities such as state and local agencies. Agreements of this nature can be extremely helpful and effective in addressing local and regional environmental and safety concerns, including the sharing of costs associated with mitigating merger-related environmental impacts.

(2) Applicants will be required to work with the Federal Railroad Administration, on a case-by-case basis, to formulate Safety Integration Plans to ensure that safe operations are maintained throughout the merger implementation process. Applicants will also be required to submit evidence about potentially blocked grade crossings as a result of merger-related traffic increases.

(g) *Oversight.* As a condition to its approval of any major transaction, the Board will establish a formal oversight process. For at least the first 5 years following approval, applicants will be required to present evidence to the Board, on no less than an annual basis,

to show that the merger conditions imposed by the Board are working as intended, that the applicants are adhering to the various representations they made on the record during the course of their merger proceeding, that no unforeseen harms have arisen that would require the Board to alter existing merger conditions or impose new ones, and that the merger benefit projections accepted by the Board are being realized in a timely fashion. Parties will be given the opportunity to comment on applicants' submissions, and applicants will be given the opportunity to reply to the parties' comments. During the oversight period, the Board will retain jurisdiction to impose any additional conditions it determines are necessary to remedy or offset unforeseen adverse consequences of the underlying transaction.

(h) *Service assurance and operational monitoring.* (1) Good service is of vital importance to shippers. Accordingly, applicants must file, with the initial application and operating plan, a service assurance plan, identifying the precise steps to be taken to ensure continuation of adequate service and to provide for improved service. This plan must include the specific information set forth at § 1180.10 on how shippers and connecting railroads (including Class II and III carriers) across the new system will be affected and benefitted by the proposed consolidation. As part of this plan, the Board will require applicants to establish contingency plans that would be available to address the negative impacts if projected service levels do not materialize in a timely fashion.

(2) The Board will conduct extensive post-approval operational monitoring to help ensure that service levels after a merger are reasonable and adequate.

(3) We will require applicants to establish problem resolution teams and specific procedures for problem resolution to ensure that post-merger service problems, related claims issues, and other matters are promptly addressed. Also, we would envision the establishment of a Service Council made up of shippers, railroads, and other interested parties to provide an ongoing forum for the discussion of implementation issues.

(i) *Cumulative impacts and crossover effects.* Because there are so few remaining Class I carriers and the railroad industry constitutes a network of competing and complementary components, the Board cannot evaluate the merits of a major transaction in isolation—the Board must also consider the cumulative impacts and crossover effects likely to occur as rival carriers

react to the proposed combination. The Board expects applicants to anticipate with as much certainty as possible what additional Class I merger applications are likely to be filed in response to their own application and explain how these applications, taken together, could affect the eventual structure of the industry and the public interest. When calculating the likely public benefits that their merger will generate, applicants are to measure these benefits in light of the anticipated downstream mergers. Applicants will be expected to discuss whether and how the type or extent of any conditions imposed on their proposed merger would have to be altered, or any new conditions imposed, following approval by us of any future consolidation(s).

(j) *Inclusion of other carriers.* The Board will consider requiring inclusion of another carrier as a condition to approval only where there is no other reasonable alternative for providing essential services, the facilities fit operationally into the new system, and inclusion can be accomplished without endangering the operational or financial success of the new company.

(k) *Transnational issues.* (1) Future merger applications may present novel and significant transnational issues. In cases involving major Canadian and Mexican railroads, applicants must submit "full system" competitive analyses and operating plans—incorporating their operations in Canada or Mexico—from which we can determine the competitive, service, employee, safety, and environmental impacts of the prospective operations within the United States. With respect to rail safety in the United States, applicants must explain how cooperation with the Federal Railroad Administration will be maintained without regard to the national origins of merger applicants. When an application would result in foreign control of a Class I railroad, applicants must assess the likelihood that commercial decisions made by foreign railroads could be based on national or provincial rather than broader economic considerations and be detrimental to the interests of the United States rail network, and applicants must address how any ownership restrictions imposed by foreign governments should affect our public interest assessment.

(2) The Board will consult with relevant officials as appropriate to ensure that any conditions it imposes on a transaction are consistent with the North American Free Trade Agreement and other pertinent international agreements to which the United States is a party. In addition, the Board will

cooperate with those Canadian and Mexican agencies charged with approval and oversight of a proposed transnational railroad combination.

(l) *National defense.* Rail mergers must not detract from the ability of the United States military to rely on rail transportation to meet the nation's defense needs. Applicants must discuss and assess the national defense ramifications of their proposed merger.

(m) *Public participation.* To ensure a fully developed record on the effects of a proposed railroad consolidation, the Board encourages public participation from federal, state, and local government departments and agencies; affected shippers, carriers, and rail labor; and other interested parties.

4. Section 1180.3 is proposed to be amended by revising paragraphs (a) and (b) to read as follows:

§ 1180.3 Definitions.

(a) *Applicant.* The term *applicant* means the parties initiating a transaction, but does not include a wholly owned direct or indirect subsidiary of an applicant if that subsidiary is not a rail carrier. Parties who are considered applicants, but for whom the information normally required of an applicant need *not* be submitted, are:

(1) In *minor* trackage rights applications, the transferor; and
(2) In responsive applications, a primary applicant.

(b) *Applicant carriers.* The term *applicant carriers* means: any applicant that is a rail carrier; any rail carrier operating in the United States, Canada, and/or Mexico in which an applicant holds a controlling interest; and all other rail carriers involved in the transaction. This does not include carriers who are involved only by virtue of an existing trackage rights agreement with applicants.

* * * * *

5. Section 1180.4 is proposed to be amended by revising paragraph (a)(1) to read as follows, by removing paragraph (a)(4), by adding new paragraphs (b)(4) and (c)(6)(vi) to read as follows, and by revising paragraphs (d), (e)(2), (e)(3), and (f)(2) to read as follows:

§ 1180.4 Procedures.

(a) * * * (1) The original and 25 copies of all documents shall be filed in *major* proceedings. The original and 10 copies shall be filed in *significant* and *minor* proceedings.

* * * * *

(b) * * *

(4) When filing the notice of intent required by paragraph (b)(1) of this section, applicants also must file:

(i) *A proposed procedural schedule.* In any proceeding involving either a major transaction or a significant transaction, the Board will publish a **Federal Register** notice soliciting comments on the proposed procedural schedule, and will, after review of any comments filed in response, issue a procedural schedule governing the course of the proceeding.

(ii) *A proposed draft protective order.* The Board will issue, in each proceeding in which such an order is requested, an appropriate protective order.

(iii) *A statement of waybill availability for major transactions.* Applicants must indicate, as soon as practicable after the issuance of a protective order, that they will make their 100% traffic tapes available (subject to the terms of the protective order) to any interested party on written request. The applicants may require that, if the requesting party is itself a railroad, applicants will make their 100% traffic tapes available to that party only if it agrees, in its written request, to make its own 100% traffic tapes available to applicants (subject to the terms of the protective order) when it receives access to applicants' tapes.

(iv) *A proposed voting trust.* In each proceeding involving a major transaction, applicants contemplating the use of a voting trust must inform the Board as to how the trust would insulate them from an unlawful control violation and as to why their proposed use of the trust, in the context of their impending control application, would be consistent with the public interest. Following a brief period of public comment and replies by applicants, the Board will issue a decision determining whether applicants may establish and use the trust.

(c) * * *

(6) * * *

(vi) The information and data required of any applicant may be consolidated with the information and data required of the affiliated applicant carriers.

(d) *Responsive applications.* (1) No responsive applications shall be permitted to minor transactions.

(2) An inconsistent application will be classified as a major, significant, or minor transaction as provided for in § 1180.2(a) through (c). The fee for an inconsistent application will be the fee for the type of transaction involved. See 49 CFR 1002.2(f)(38) through (41). The fee for any other type of responsive application is the fee for the particular type of proceeding set forth in 49 CFR 1002.2(f).

(3) Each responsive application filed and accepted for consideration will automatically be consolidated with the primary application for consideration.

(e) * * *

(2) The evidentiary proceeding will be completed:

(i) Within 1 year (after the primary application is accepted) for a *major* transaction;

(ii) Within 180 days for a *significant* transaction; and

(iii) Within 105 days for a *minor* transaction.

(3) A final decision on the primary application and on all consolidated cases will be issued:

(i) Within 90 days (after the conclusion of the evidentiary proceeding) for a *major* transaction;

(ii) Within 90 days for a *significant* transaction; and

(iii) Within 45 days for a *minor* transaction.

* * * * *

(f) * * *

(2) Except as otherwise provided in the procedural schedule adopted by the Board in any particular proceeding, petitions for waiver or clarification must be filed at least 45 days before the application is filed.

* * * * *

6. Section 1180.6 is proposed to be amended by revising paragraphs (b)(1), (b)(2), (b)(3), (b)(4), (b)(6), and (b)(8) to read as follows, and by adding new paragraphs (b)(9), (b)(10), (b)(11), (b)(12), and (b)(13) to read as follows:

§ 1180.6 Supporting information.

* * * * *

(b) * * *

(1) *Form 10-K (exhibit 6).* Submit: the most recent filing with the Securities and Exchange Commission (SEC) under 17 CFR 249.310 if made within the year prior to the filing of the application by each applicant or by any entity that is in control of an applicant. These shall not be incorporated by reference, and shall be updated with any Form 10-K subsequently filed with the SEC over the duration of the proceeding.

(2) *Form S-4 (exhibit 7).* Submit: the most recent filing with the SEC under 17 CFR 239.25 if made within the year prior to the filing of the application by each applicant or by any entity that is in control of an applicant. These shall not be incorporated by reference, and shall be updated with any Form S-4 subsequently filed with the SEC over the duration of the proceeding.

(3) *Change in control (exhibit 8).* If an applicant carrier submits an annual report Form R-1, indicate any change in ownership or control of that applicant

carrier not indicated in its most recent Form R-1, and provide a list of the principal six officers of that applicant carrier and of any related applicant, and also of their majority-owned rail carrier subsidiaries. If any applicant carrier does not submit an annual report Form R-1, list all officers of that applicant carrier, and identify the person(s) or entity/entities in control of that applicant carrier and all owners of 10% or more of the equity of that applicant carrier.

(4) *Annual reports (exhibit 9).* Submit: the two most recent annual reports to stockholders by each applicant, or by any entity that is in control of an applicant, made within 2 years of the date of filing of the application. These shall not be incorporated by reference, and shall be updated with any annual or quarterly report to stockholders issued over the duration of the proceeding.

* * * * *

(6) *Corporate chart (exhibit 11).* Submit a corporate chart indicating all relationships between applicant carriers and all affiliates and subsidiaries and

also companies controlling applicant carriers directly, indirectly or through another entity (with each chart indicating the percentage ownership of every company on the chart by any other company on the chart). For each company: include a statement indicating whether that company is a noncarrier or a carrier; and identify every officer and/or director of that company who is also an officer and/or director of any other company that is part of a different corporate family, which includes a rail carrier. Such information may be referenced through notes to the chart.

* * * * *

(8) *Intercompany or financial relationships.* Indicate whether there are any direct or indirect intercompany or financial relationships at the time the application is filed, not disclosed elsewhere in the application, through holding companies, ownership of securities, or otherwise, in which applicants or their affiliates own or control more than 5% of the stock of a non-affiliated carrier, including those

relationships in which a group affiliated with applicants owns more than 5% of the stock of such a carrier. Indicate the nature and extent of such relationships, if they exist, and, if an applicant owns securities of a carrier subject to 49 U.S.C. Subtitle IV, provide the carrier's name, a description of securities, the par value of each class of securities held, and the applicant's percentage of total ownership. For purposes of this paragraph (b)(8), "affiliates" has the same meaning as "affiliated companies" in Definition 5 of the Uniform System of Accounts (49 CFR part 1201, subpart A).

(9) *Employee impact exhibit.* The effect of the proposed transaction upon applicant carriers' employees (by class or craft), the geographic points where the impacts will occur, the time frame of the impacts (for at least 3 years after consolidation), and whether any employee protection agreements have been reached. This information (except with respect to employee protection agreements) may be set forth in the following format:

EFFECTS ON APPLICANT CARRIERS' EMPLOYEES

Current location	Classification	Jobs transferred to	Jobs abolished	Jobs created	Year

(10) *Conditions to mitigate and offset merger harms.* Applicants are expected to propose measures to mitigate and offset merger harms. These conditions should not simply preserve, but also enhance, competition.

(i) Applicants must explain how they will preserve competitive options for shippers and for Class II and III rail carriers. At a minimum, applicants must explain how they will preserve the use of major gateways, the potential for build-outs or build-ins, and the opportunity to enter into contracts for one segment of a movement as a means of gaining the right separately to pursue rate relief for the remainder of the movement.

(ii) Applicants must explain how the transaction and conditions they propose will enhance competition and improve service.

(11) *Calculating public benefits.* Applicants must enumerate and, where possible, quantify the net public benefits their merger will generate (if approved). In making this estimate,

applicants should identify the benefits arising from service improvements, enhanced competition, cost savings, and other merger-related public interest benefits. Applicants must also identify, discuss, and, where possible, quantify the likely negative effects approval will entail, such as losses of competition, potential for service disruption, and other merger-related harms. In addition, applicants must suggest additional measures that the Board might take if the anticipated public benefits identified by applicants fail to materialize in a timely manner.

(12) *Downstream merger applications.* (i) Applicants should anticipate what additional Class I merger applications are likely to be filed in response to their own application and explain how, taken together, these applications could affect the eventual structure of the industry and the public interest.

(ii) Applicants are expected to discuss whether and how the type or extent of any conditions imposed on their proposed merger would have to be

altered, or any new conditions imposed, should the Board approve additional future rail mergers.

(iii) In calculating the public benefits arising from their merger, applicants should measure them in light of the anticipated downstream merger applications.

(13) *Purpose of the proposed transaction.* The purpose sought to be accomplished by the proposed transaction, e.g., improving service, enhancing competition, strengthening the nation's transportation infrastructure, creating operating economies, and ensuring financial viability.

* * * * *

7. Section 1180.7 is proposed to be revised to read as follows:

§ 1180.7 Market analyses.

(a) For *major and significant* transactions, applicants shall submit impact analyses (exhibit 12) that describe the impacts of the proposed transaction—both adverse and

beneficial—on inter- and intramodal competition with respect to freight surface transportation in the regions affected by the transaction and on the provision of essential services by applicants and other carriers. An impact analysis should include underlying data, a study on the implications of those data, and a description of the resulting likely effects of the transaction on transportation alternatives available to the shipping public. Each aspect of the analysis should specifically address significant impacts as they relate to the applicable statutory criteria (49 U.S.C. 11324(b) or (d)), essential services, and competition. Applicants must identify and address relevant markets and issues, and provide additional information as requested by the Board on markets and issues that warrant further study. Applicants (and any other party submitting analyses) must demonstrate both the relevance of the markets and issues analyzed and the validity of the methodology. All underlying assumptions must be clearly stated. Analyses should reflect the consolidated company's marketing plan and existing and potential competitive alternatives (inter- as well as intramodal). They can address: city pairs, interregional movements, movements through a point, or other factors; a particular commodity, group of commodities, or other commodity factor that will be significantly affected by the transaction; or other effects of the transaction (such as on a particular type of service offered).

(b) For *major* transactions, applicants shall submit "full system" impact analyses (incorporating any operations in Canada or Mexico) from which they must demonstrate the impacts of the transaction—both adverse and beneficial—on competition within regions of the United States and this nation as a whole (including inter- and intramodal competition, product competition, and geographic competition) and the provision of essential services (including freight, passenger, and commuter) by applicants and other network links (including Class II and Class III rail carriers and ports). Applicants' impact analyses must at least provide the following types of information:

(1) The anticipated effects of the transaction on traffic patterns, market concentrations, and/or transportation alternatives available to the shipping public. Consistent with § 1180.6(b)(10), these must incorporate a detailed examination of the ways in which the transaction would enhance competition and of the specific measures proposed

by applicants to preserve existing levels of competition and essential services;

(2) Actual and projected market shares of originated and terminated traffic by railroad for each major point on the combined system before and after the proposed transaction. Applicants may define points as individual stations or as larger areas (such as Bureau of Economic Analysis statistical areas or U.S. Department of Agriculture Crop Reporting Districts) as relevant and indicate the extent of switching access and availability of terminal belt railroads. Applicants should list points where the number of serving railroads would drop from two to one and from three to two, respectively, as a result of the proposed transaction (both before and after applying proposed remedies for competitive harm);

(3) Actual and projected market shares of revenues and traffic volumes before and after the proposed transaction for major interregional or corridor flows by major commodity group. Origin/destination areas should be defined at relevant levels of aggregation for the commodity group in question. The data should be broken down by mode and (for the railroad portion) by single-line and interline routings (showing gateways used). Applicants should explain relevant differences in the effectiveness of competing routings (with respect, *e.g.*, to transit time, terrain, track conditions, and capacity);

(4) For each major commodity group, an analysis of traffic flows indicating patterns of geographic competition or product competition across different railroad systems, showing actual and projected revenues and traffic volumes before and after the proposed transaction;

(5) Maps and other graphic displays where helpful in illustrating the analyses in this section;

(6) An explicit delineation of the projected impacts of the transaction on the ability of various network links (including Class II and Class III rail carriers and ports) to participate in the competitive process and to sustain essential services; and

(7) Supporting data for the analyses in this section, such as the basis for projections of changes in traffic patterns, including shipper surveys and econometric or other statistical analyses. If not made part of the application, applicants shall make these data available in a repository for inspection by other parties or otherwise supply these data on request, for example, electronically. Access to confidential information will be subject to protective order. For information drawn from

publicly available published sources, detailed citations will suffice.

(c) For *significant* transactions, specific regulations on impact analyses are not provided so that the parties will have the greatest leeway to develop the best evidence on the impacts of each individual transaction. As a general guideline, applicants shall provide supporting data that may (but need not) include: current and projected traffic flows; data underlying sales forecasts or marketing goals; interchange data; market share analysis; and/or shipper surveys. *It is important to note that these types of studies are neither limiting nor all inclusive.* The parties must provide supporting data, but are free to choose the type(s) and format. If not made part of the application, applicants shall make these data available in a repository for inspection by other parties or otherwise supply these data on request, for example, electronically. Access to confidential information will be subject to protective order. For information drawn from publicly available published sources, detailed citations will suffice.

8. Section 1180.8 is proposed to be amended by redesignating paragraphs (a) and (b) as paragraphs (b) and (c), respectively, and by adding a new paragraph (a) to read as follows:

§ 1180.8 Operational data.

(a) For *major* transactions applicants must submit a "full system" operating plan—incorporating any prospective operations in Canada and Mexico—from which they must demonstrate how the proposed transaction will affect operations within regions of the United States and this nation as a whole.

(1) *Safety integration plan.* Applicants must submit a safety integration plan.

(2) *Blocked crossings.* Applicants must indicate what measures they plan to take to address potentially blocked grade crossings as a result of merger-related changes in operations or increases in rail traffic.

* * * * *

9. A new § 1180.10 is proposed to be added to read as follows:

§ 1180.10 Service assurance plans.

For *major* transactions: *service assurance plan.* Applicants shall submit a service assurance plan, which, in concert with the operating plan requirements, will identify the precise steps to be taken by applicants to ensure that projected service levels are attainable and that key elements of the operating plan will improve service. The plan shall describe with reasonable precision how operating plan efficiencies will translate into present

and future benefits for the shipping public. The plan must also describe any potential area of service degradation that might result due to operational changes. The plan must encompass:

(a) *Integration of operations.* Based on the operating plan, and using benchmarks for the year immediately preceding the filing date of the application, applicants must describe how the transaction will result in improved service levels and must identify potential instances where service may be degraded. While precise in nature, this description is expected to be a route level review rather than a shipper-by-shipper review. Nonetheless, the plan should be sufficient for individual shippers to evaluate the projected improvements and respond to the potential areas of service degradation for their customary traffic routings. The plan should inform Class II and III railroads and other connecting railroads of the operational changes that may have an impact on their operations, including operations involving major gateways.

(b) *Coordination of freight and passenger operations.* If Amtrak or commuter services are operated over the lines of the applicant carriers, applicants must describe definitively how they will continue to operate these lines to fulfill existing performance agreements for those services. Whether or not the passenger services operated are over lines of the applicants, applicants must establish operating protocols that ensure effective communications with Amtrak and/or regional rail passenger operators in order to minimize any potential transaction-related negative impacts.

(c) *Yard and terminal operations.* The operational fluidity of yards and terminals is key to the successful implementation of a transaction and effective service to shippers. Applicants must describe how the operations of principal classification yards and major terminals will be changed or revised and how these revisions will affect service to customers. As part of this analysis, applicants must furnish dwell time information for one year prior to the transaction for each facility described above, and estimate what the expected dwell time will be after the revised operations are implemented. Also required will be a discussion of on-time performance for the principal yards and terminals in the same terms as required for dwell time.

(d) *Infrastructure improvements.* Applicants must identify potential infrastructure impediments (using volume/capacity line and terminal forecasts), formulate solutions to those

impediments, and develop timeframes for resolution. Applicants must also develop a capital improvement plan (to support the operating plan) for timely funding and completing the improvements critical to transition of operations. They should also describe improvements related to future growth, and indicate the relationship of the improvements to service delivery.

(e) *Information technology systems.* Because the accurate and timely integration of applicants' information systems are vitally important to service delivery, applicants must identify the process to be used for systems integration and training of involved personnel. This must include identification of the principal operations-related systems, operating areas affected, implementation schedules, the realtime operations data used to test the systems, and pre-implementation training requirements needed to achieve completion dates. If such systems will not be integrated and on line prior to implementation of the transaction, applicants must describe the interim systems to be used and how those systems will assure service delivery.

(f) *Customer service.* To achieve and maintain customer confidence in the transaction and to ensure the successful integration and consolidation of existing customer service functions, applicants must identify their plans for the staffing and training of personnel within or supporting the customer service centers. This discussion must include specific information on the planned steps to familiarize customers with any new processes and procedures that they may encounter in using the consolidated systems and/or changes in contact locations or telephone numbers.

(g) *Labor.* Applicants must furnish a plan for reaching necessary labor implementing agreements. Applicants must also provide evidence that sufficient qualified employees to effect implementation will be available at the proper locations prior to the transaction.

(h) *Training.* Applicants must establish a plan to provide necessary training to employees involved with operations, train and engine service, operating rules, dispatching, payroll and timekeeping, field data entry, safety and hazardous material compliance, and contractor support functions (i.e., crew van service), as well as to other employees in functions that will be affected by the transaction.

(i) *Contingency plans for merger-related service disruptions.* In order to address potential disruptions of service that may occur, applicants must establish contingency plans. Those

plans, based upon available resources and traffic flows and density, must identify potential areas of disruption and the risk of occurrence. Applicants must provide evidence that contingency plans are in place to minimize negative service impacts and promptly restore service.

(j) *Timetable.* Applicants must identify all major functional or system changes/consolidations that will occur and the time line for successful completion.

10. A new § 1180.11 is proposed to be added to read as follows:

§ 1180.11 Additional information needs for transnational mergers.

(a) Applicants must explain how cooperation with the Federal Railroad Administration will be maintained without regard to the national origins of merger applicants.

(b) Applicants must assess the likelihood that commercial decisions made by foreign railroads could be based on national or provincial rather than broader economic considerations, and be detrimental to the interests of the United States, and discuss any ownership restrictions imposed on them by foreign governments.

(c) Applicants must discuss and assess the national defense ramifications of the proposed merger.

[FR Doc. 00-25043 Filed 10-2-00; 8:45 am]

BILLING CODE 4915-00-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AG12

Endangered and Threatened Wildlife and Plants; Reopening of Public Comment Period and Notice of Availability of Draft Economic Analysis for Proposed Critical Habitat Determination for the Zapata Bladderpod.

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed Rule; Extension of public comment period and notice of availability of draft economic analysis.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the availability of the draft economic analysis for the proposed designation of critical habitat for the Zapata bladderpod (*Lesquerella thamnophila*).

We also provide notice that the public comment period for the proposal is reopened to allow all interested parties

to submit written comments on the proposal and the draft economic analysis. Comments submitted during the previous comment period need not be resubmitted as they will be incorporated into the public record and will be fully considered in the final determination on the proposal.

DATES: The original comment period closed on September 18, 2000. The comment period is hereby reopened and now closes on November 2, 2000. Comments from all interested parties must be received by the closing date. Any comments that are received after the closing date may not be considered in the final decision on this proposal.

ADDRESSES: Copies of the draft economic analysis are available on the Internet at <http://ifw2es.fws.gov/library/> or by writing to the Field Supervisor, Ecological Services Field Office, c/o TAMUCC, Box 338, 6300 Ocean Drive, Corpus Christi, Texas 78412, or facsimile 1-361-994-8262. All written comments should be submitted to the Field Supervisor at the above address. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Loretta Pressly, Fish and Wildlife Biologist, at the above address (telephone 1-361-994-9005).

SUPPLEMENTARY INFORMATION:

Background

The Zapata bladderpod was listed as an endangered species on December 22, 1999. The Zapata bladderpod is a perennial plant that grows

opportunisticly; that is, the density of Zapata bladderpod plants and the sizes of populations fluctuate in response to rainfall. They are cryptic plants, which show little vegetative growth during drought conditions, hampering survey efforts for additional populations. All known populations of the Zapata bladderpod occur on graveled to sandy-loam upland terraces above the Rio Grande floodplain in South Texas.

Critical habitat was proposed on July 19, 2000. Of the ten populations of Zapata bladderpod that have been located, only three populations are still known to display live plants. The introduction of non-native species such as pasture grass, overgrazing, urban development, and oil and gas production activities have all contributed to the decline of the plant.

Ten areas of critical habitat are being proposed for the Zapata bladderpod. Seven Lower Rio Grande Valley National Wildlife Refuge tracts in Starr County are proposed, as well as one private land site also in Starr County. Two sites along the Texas Department of Transportation's Highway 83 right-of-way in Zapata County are being proposed as critical habitat. Altogether 5,330 acres of land are being proposed for critical habitat.

Section 4(b)(2) of the Act requires that we designate or revise critical habitat based upon the best scientific and commercial data available and after taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude an area from critical habitat if we determine that

the benefits of excluding the area outweigh the benefits of including the area as critical habitat, provided such exclusion will not result in the extinction of the species. Consequently, we have prepared a draft economic analysis concerning the proposed critical habitat designation, which is available for review and comment at the above Internet and mailing addresses.

Public Comments Solicited

We solicit comments on the draft economic analysis described in this notice, as well as any other aspect of the proposed designation of critical habitat for the Zapata bladderpod. Our final determination on the proposed critical habitat will take into consideration comments and any additional information received by the date specified above. All previous comments and information submitted during the comment period need not be resubmitted. The comment period is extended to November 2, 2000. Written comments may be submitted to the Field Supervisor at the above address.

Author

The primary author of this notice is Loretta Pressly, U.S. Fish and Wildlife Service (see **ADDRESSES**).

Authority: The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Renne Lohoefer,

Acting Regional Director, Region 2, Fish and Wildlife Service.

[FR Doc. 00-25323 Filed 10-2-00; 8:45 am]

BILLING CODE 4310-55-P

Notices

Federal Register

Vol. 65, No. 192

Tuesday, October 3, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. CN-00-008]

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request an extension for and revision to a currently approved information collection for Cotton Classification and Market News Service.

DATES: Comments on this notice must be received by December 4, 2000 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Mack Bennett, U.S. Department of Agriculture, Agricultural Marketing Service, Cotton Programs, Market News Branch, 3275 Appling Road, Memphis, Tennessee 38133; (901) 384-3016 telephone and (901) 384-3036 fax.

SUPPLEMENTARY INFORMATION:

Title: Cotton Classification and Market News Service.

OMB Number: 0581-0009.

Expiration Date of Approval: July 31, 2001.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: The Cotton Classification and Market News Service program provides market information on Cotton prices, quality, stocks, demand and supply to growers, ginners, merchandisers, textile mills and the public for their use in making sound business decisions. The Cotton Statistics and Estimates Act, 7 U.S.C. 471-476,

authorizes and directs the Secretary of Agriculture to: (a) Collect and publish annually, statistics or estimates concerning the grades and staple lengths of stocks of cotton, known as the carryover, on hand on the 1st of August each year in warehouses and other establishments of every character in the continental U.S., and following such publication each year, to publish at intervals, in his/her discretion, his/her estimate of the grades and staple length of cotton of the then current crop (7 U.S.C. 471); (b) Collect, authenticate, publish and distribute by telegraph, radio, mail, or otherwise, timely information of the market supply, demand, location, and market prices of cotton (7 U.S.C. 473b). The Agricultural Marketing Act of 1946, 7 U.S.C. 1621-1627, authorizes and directs the Secretary of Agriculture to collect and disseminate marketing information, including adequate outlook information on a market-area basis, for the purpose of anticipating and meeting consumer requirements, aiding in the maintenance of farm income, and bringing about a balance between production and utilization of agricultural products.

The information collection requirements in this request are essential to carry out the intent of the Acts and to provide the cotton industry the type of information they need to make sound business decisions. The information collected is the minimum required. Information is requested from growers, cooperatives, merchants, manufacturers, and other government agencies. This includes information on cotton, cottonseed and cotton linters.

The information collected is used only by authorized employees of the USDA, AMS. The Cotton Industry is the primary user of the compiled information and AMS and other government agencies are secondary users.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.0968 (234/2417) hours per response.

Respondents: Cotton Merchandisers, Textile Mills, Ginners.

Estimated Number of Respondents: 495.

Estimated Number of Responses per Respondent: 4.883 (2,417/495).

Estimated Total Annual Burden on Respondents: 234 hours.

Comments are invited on: (1) Whether the proposed collection of information

is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Darryl Earnest, Assistant Associate Deputy Administrator, Cotton Programs, AMS, USDA, 1400 Independence Avenue, SW, Stop 0224, Room 2641-S, Washington, DC 20250. All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: September 21, 2000.

Norma McDill,

Acting Deputy Administrator, Cotton Programs.

[FR Doc. 00-24775 Filed 10-2-00; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Sunshine Act Meeting

TIME AND DATE: 2 p.m., October 10, 2000.

PLACE: Room 104-A, Jamie L. Whitten Building, U.S. Department of Agriculture, Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the Minutes of the Open Meeting of May 17, 1999.
2. Memorandum re: Update of Commodity Credit Corporation (CCC)-Owned Inventory.
3. Memorandum re: Settlement Actions Report.
4. Memorandum re: CCC Stocks Available for Donation Overseas Under Section 416(b) of the Agricultural Act of 1949, as Amended, for Fiscal Years 1998, 1999, and 2000.

5. Docket A–POL–98–007, Rev. 1, re: Commodity Credit Corporation Claims Policy.

CONTACT PERSON FOR MORE INFORMATION:

Juanita B. Daniels, Acting Secretary, Commodity Credit Corporation, Stop 0571, U.S. Department of Agriculture, 1400 Independence Avenue SW, Washington, D.C. 20250–0571.

Dated: September 28, 2000.

Juanita B. Daniels,

Acting Secretary, Commodity Credit Corporation.

[FR Doc. 00–25420 Filed 9–28–00; 4:49 pm]

BILLING CODE 3410–05–U

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Notice of the National Agricultural Research, Extension, Education, and Economics Advisory Board Meeting

AGENCY: Research, Education, and Economics, USDA.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. App., the United States Department of Agriculture announces a meeting of the National Agricultural Research, Extension, Education, and Economics Advisory Board.

SUPPLEMENTARY INFORMATION: The National Agricultural Research, Extension, Education, and Economics Advisory Board, which represents 30 constituent categories, as specified in section 802 of the Federal Agriculture Improvement and Reform Act of 1996 (Pub. L. No. 104–127), has scheduled a National Agricultural Research, Extension, Education, and Economics Advisory Board Meeting, October 16–18, 2000.

On Monday, October 16 through Wednesday, October 18, 2000, the Advisory Board will hold a fall General Meeting which will include Orientation for new members, on Monday morning and a General Business Session in the afternoon. The Business Session will include reports from several Working Groups of the Advisory Board, two of which will be reporting on the ARS Peer Review process recommendations and follow-up to the “Cutting-Edge Science and Technology” meeting held in July 2000. A Focus Session with the theme, “Improving Advocacy and Funding for Research, Education, and Economics in USDA,” will be held on Tuesday, October 17, 2000, which will include (1) statement of the problem, (2) the present USDA budget process, (3) advocacy strategy, and (4) successful and new

approaches for budget support. Speakers from the White House Office of Science and Technology Policy, USDA, AESOP Enterprises, Ltd., other groups supporting the National Institutes of Health and the National Science Foundation, and a variety of other interests will be invited to present policy and funding strategies for research and education. The objective of this meeting will be to provide the Advisory Board an opportunity to understand USDA and Federal Government approaches to budget formation and successful funding strategies. On Wednesday, October 18, 2000, the Advisory Board will hold the election of their new Chair, Vice Chair, and Executive Committee, and focus on future efforts of the Board in addressing the transition in the Administration. They will be articulating their findings from the “Cutting-Edge Science and Technology” meeting and the previous day’s focus sessions into formal recommendations for the Secretary of Agriculture. They will also begin setting their agenda for the coming year, which will include establishment of a rapport with the new Administration on communicating high priority USDA research and education opportunities. Limited time will be provided for comments from the public as noted in a forthcoming agenda. Also written comments will be accepted for public record up to 2 weeks following the Board meeting. Final agenda will be available to the public prior to the meeting.

Dates:

October 16—9:00 a.m. to Noon—

Orientation of New Members

October 16—1:00 p.m. to 5:00 p.m.—

General Meeting

October 16—6:00 p.m. to 8:00 p.m.—

Working Reception

October 17—9:00 a.m. to 5:00 p.m.—

Focus Session

October 18—9:00 a.m. to Noon—Focus

Session Wrap-up and Discussion

Place: Loew’s L’Enfant Plaza Hotel, 480 L’Enfant Plaza, SW., Washington, DC (Rooms to be announced)

Type of Meeting: Open to the public.

Comments: The public may file written comments before or after the meeting with the contact person. All statements will become a part of the official records of the National Agricultural Research, Extension, Education, and Economics Advisory Board and will be kept on file for public review in the Office of the Advisory Board; Research, Education, and Economics; U.S. Department of Agriculture; Washington, DC 20250–2255.

FOR FURTHER INFORMATION CONTACT:

Deborah Hanfman, Executive Director, National Agricultural Research, Extension, Education, and Economics Advisory Board, Research, Education, and Economics Advisory Board Office, Room 344A Jamie L. Whitten Building, U.S. Department of Agriculture, STOP: 2255, 1400 Independence Avenue, SW, Washington, DC 20250–2255. Telephone: 202–720–3684, Fax: 202–720–6199, or e-mail: lshea@reeusda.gov.

Done at Washington, DC this 27th day of September 2000.

I. Miley Gonzalez,

Under Secretary, Research, Education, and Economics.

[FR Doc. 00–25296 Filed 10–2–00; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF AGRICULTURE

Deschutes Provincial Interagency Executive Committee (PIEC), Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Deschutes PIEC Advisory Committee will meet on October 17, 2000 in the Chinook Conference Room at the Kah-Nee-Ta resort located approximately 14 miles east of Warm Springs, Oregon on 100 Main Street. Agenda items will include an Open Space Planning session starting at 0900 to assess where the committee would like to focus their future attention in the province, Info Sharing and a Public Forum from 4 pm till 4:30 pm. All Deschutes Province Advisory Committee Meetings are open to the public.

FOR FURTHER INFORMATION CONTACT:

Mollie Chaudet, Province Liaison, USDA, Bend-Ft. Rock Ranger District, 1230 N.E. 3rd, Bend, OR 97701, Phone (541) 383–4769.

Leslie A.C. Weldon,

Forest Supervisor.

[FR Doc. 00–25320 Filed 10–2–00; 8:45 am]

BILLING CODE 3410–11–M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Public Rights-of-Way Access Advisory Committee; Meeting

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) established a Public Rights-of-Way Access Advisory Committee (committee) to assist the Board in developing a proposed rule on accessibility guidelines for newly constructed and altered public rights-of-way covered by the Americans with Disabilities Act of 1990 and the Architectural Barriers Act of 1968. This document announces the next meeting of the committee, which will be open to the public.

DATES: The fifth meeting of the committee is scheduled for October 18, through 20, 2000, beginning at 8:30 a.m. and ending at 5:30 p.m. each day.

ADDRESSES: The meeting will be held at the Tysons Corner Marriott, 8028 Leesburg Pike, Vienna, Virginia 22182.

FOR FURTHER INFORMATION CONTACT: Scott Windley, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC, 20004-1111. Telephone number (202) 272-5434 extension 125 (Voice); (202) 272-5449 (TTY). E-mail windley@access-board.gov. This document is available in alternate formats (cassette tape, Braille, large print, or ASCII disk) upon request. This document is also available on the Board's Internet Site (<http://www.access-board.gov/news/prowmtg.htm>).

SUPPLEMENTARY INFORMATION: On October 20, 1999, the Architectural and Transportation Barriers Compliance Board (Access Board) published a notice appointing members to a Public Rights-of-Way Access Advisory Committee (committee) to provide recommendations for developing a proposed rule addressing accessibility guidelines for newly constructed and altered public rights-of-way covered by the Americans with Disabilities Act of 1990 and the Architectural Barriers Act of 1968. 64 FR 56482 (October 20, 1999).

Committee meetings will be open to the public and interested persons can attend the meetings and communicate their views. Members of the public will have an opportunity to address the committee on issues of interest to them

and the committee during the public comment period at the end of each meeting day. Members of groups or individuals who are not members of the committee may also have the opportunity to participate with subcommittees of the committee. Additionally, all interested persons will have the opportunity to comment when the proposed accessibility guidelines for public rights-of-way are issued in the **Federal Register** by the Access Board.

Individuals who require sign language interpreters or real-time captioning systems should contact Scott Windley by October 10, 2000. Notice of the future meetings will be published in the **Federal Register**.

Lawrence W. Roffee,
Executive Director.

[FR Doc. 00-25330 Filed 10-2-00; 8:45 am]

BILLING CODE 8150-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

Quarterly Update to Annual Listing of Foreign Government Subsidies on Articles of Cheese Subject to an In-Quota Rate of Duty

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Publication of quarterly update to annual listing of foreign government subsidies on articles of cheese subject to an in-quota rate of duty.

SUMMARY: The Department of Commerce, in consultation with the Secretary of Agriculture, has prepared its quarterly update to the annual list of foreign government subsidies on articles of cheese subject to an in-quota rate of duty during the period April 1, 2000 through June 30, 2000. We are publishing the current listing of those subsidies that we have determined exist.

EFFECTIVE DATE: October 3, 2000.

FOR FURTHER INFORMATION CONTACT: Tipten Troidl or Russell Morris, AD/CVD Enforcement, Office VI, Group II, Import Administration, International Trade Administration, U.S. Department

of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230, telephone: (202) 482-2786.

SUPPLEMENTARY INFORMATION: Section 702(a) of the Trade Agreements Act of 1979 (as amended) ("the Act") requires the Department of Commerce ("the Department") to determine, in consultation with the Secretary of Agriculture, whether any foreign government is providing a subsidy with respect to any article of cheese subject to an in-quota rate of duty, as defined in section 702(g)(b)(4) of the Act, and to publish an annual list and quarterly updates of the type and amount of those subsidies. We hereby provide the Department's quarterly update of subsidies on cheeses that were imported during the period April 1, 2000 through June 30, 2000.

The Department has developed, in consultation with the Secretary of Agriculture, information on subsidies (as defined in section 702(g)(b)(2) of the Act) being provided either directly or indirectly by foreign governments on articles of cheese subject to an in-quota rate of duty. The appendix to this notice lists the country, the subsidy program or programs, and the gross and net amounts of each subsidy for which information is currently available.

The Department will incorporate additional programs which are found to constitute subsidies, and additional information on the subsidy programs listed, as the information is developed.

The Department encourages any person having information on foreign government subsidy programs which benefit articles of cheese subject to an in-quota rate of duty to submit such information in writing to the Assistant Secretary for Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

This determination and notice are in accordance with section 702(a) of the Act.

Dated: September 27, 2000.

Troy H. Cribb,
Acting Assistant Secretary for Import Administration.

Appendix

SUBSIDY PROGRAMS ON CHEESE SUBJECT TO AN IN-QUOTA RATE OF DUTY

Country	Program(s)	Gross ¹ subsidy (\$/lb)	Net ² subsidy (\$/lb)
Austria	European Union Restitution Payments	\$0.12	\$0.12
Belgium	EU Restitution Payments	0.00	0.00
Canada	Export Assistance on Certain Types of Cheese	0.24	0.24
Denmark	EU Restitution Payments	0.06	0.06
Finland	EU Restitution Payments	0.18	0.18

SUBSIDY PROGRAMS ON CHEESE SUBJECT TO AN IN-QUOTA RATE OF DUTY—Continued

Country	Program(s)	Gross ¹ subsidy (\$/lb)	Net ² subsidy (\$/lb)
France	EU Restitution Payments	0.11	0.11
Germany	EU Restitution Payments	0.10	0.10
Greece	EU Restitution Payments	0.00	0.00
Ireland	EU Restitution Payments	0.05	0.05
Italy	EU Restitution Payments	0.11	0.11
Luxembourg	EU Restitution Payments	0.07	0.07
Netherlands	EU Restitution Payments	0.06	0.06
Norway	Indirect (Milk) Subsidy	0.31	0.31
	Consumer Subsidy	0.14	0.14
Total		0.45	0.45
Portugal	EU Restitution Payments	0.05	0.05
Spain	EU Restitution Payments	0.03	0.03
Switzerland	Deficiency Payments	0.07	0.07
U.K.	EU Restitution Payments	0.08	0.08

¹ Defined in 19 U.S.C. 1677(5).² Defined in 19 U.S.C. 1677(6).

[FR Doc. 00-25378 Filed 10-2-00; 8:45 am]

BILLING CODE 3510-DS-P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE**Information Collection; Submission for OMB Review; Comment Request****AGENCY:** Corporation for National and Community Service.**ACTION:** Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the "Corporation"), has submitted two public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paper Reduction Act of 1995, Pub.L. 104-13, (44 U.S.C. Chapter 35). Copies of these individual ICRs, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Levon Buller, at (202) 606-5000, extension 383. Individuals who use a telecommunications device for the deaf (TTY-TDD) may call (800) 833-3722 between the hours of 9:00 a.m. and 5:00 p.m. Eastern Standard Time, Monday through Friday.

Comments should be sent to the Office of Information and Regulatory Affairs, Attn: Ms. Brenda Aguilar, OMB Desk Officer for the Corporation for National and Community Service, Office of Management and Budget, Room 10235, Washington, DC, 20503, (202) 395-7316, within 30 days from the date of publication in this **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary

for the proper performance of the functions of the Corporation, including whether the information will have practical utility;

- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Propose ways to enhance the quality, utility and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Two ICR documents have been submitted to OMB for consideration. The first, the *Enrollment Form*, is a proposed revision of a form currently in use (OMB Number 3045-0006). The Corporation is proposing to make a minor change in the format and to add a self-certification statement that will address a statutory requirement for individuals earning AmeriCorps education awards.

The second document, the *Exit Form*, is another form currently in use (OMB Number 3045-0015) for which some changes are being proposed. Those proposed changes would delete ten evaluative questions that are asked on the current version, delete a secondary address, and change an eleventh question regarding whether a former member desires to be contacted by organizations for reasons related to their national service.

The two documents were published in the **Federal Register** on April 7, 2000, for a 60-day pre-clearance public

comment period. The Corporation did not receive any requests for copies of the form from any organizations or individuals.

The 60-day notice contained an error in reporting on the Total Respondents and the Estimated Total Burden Hours. It indicated 5,000 respondents and 584 burden hours for each of the forms. The corrected figures should be 48,000 respondents annually and 5,600 burden hours annually for each form. It is estimated that it will average 3 minutes for an AmeriCorps member to complete the member section of the Exit form and it will take the program staff 4 minutes. The 60-day notice had these numbers reversed. The correct figures are contained in this notice.

Enrollment Form*Type of Review:* Renewal/Revision*Agency:* Corporation for National and Community Service.*Title:* Enrollment Form.*OMB Number:* OMB #3045-0006.*Agency Number:* None.*Affected Public:* AmeriCorps participants and their host programs.*Total Respondents:* 48,000 annually.*Frequency:* Average of once per year. (one form for each term of service).

Average Time Per Response: 7 minutes total—4 minutes for the AmeriCorps member to complete his or her section, and 3 minutes for the program staff to complete the Certifying Official portion.

Estimated Total Burden Hours: 5,600 hours.*Total Burden Cost (capital/startup):* N/A.*Total Burden Cost (operating/maintenance):* N/A.

Description

The Enrollment Form is the official document used to document that an AmeriCorps member is enrolled in an approved national service position and has begun to earn an education award. The form also provides the Corporation with demographic information for evaluative purposes, and allows the Corporation to project future liabilities for the National Service Trust.

The Enrollment form serves two purposes essential to the function of the AmeriCorps programs. First, it is the means by which AmeriCorps programs certify that a member is eligible to serve in AmeriCorps and has begun his or her term of service. Second, it provides the Corporation, grantees, and program managers with valuable demographic information with which the Corporation can assess and report on member placement.

The change proposed for this form is:

Three multiple-choice statements are being added above the AmeriCorps member's signature line. The statements pertain to high school graduation-related requirements in 42 U.S.C. 12501 *et seq.* Adding this item to the form will require member self-certification.

Exit Form

Type of Review: Renewal/Revision.

Agency: Corporation for National and Community Service.

Title: Exit Form (formerly called "End of Term/Exit Form")

OMB Number: 3045-0015.

Agency Number: None.

Affected Public: AmeriCorps members and their host programs.

Total Respondents: 48,000 annually.

Frequency: Average of once per year. (One time for each term of service).

Average Time Per Response: 7 minutes total—3 minutes for the member to complete his or her portion and 4 for the program staff to complete the Certifying Official portion.

Estimated Total Burden Hours: 5,600 hours.

Total Burden Cost (capital/startup): N/A.

Total Burden Cost (operating/maintenance): N/A.

Description

The Corporation's Exit Form is the means by which AmeriCorps programs certify that a member has, or has not, successfully satisfied conditions which must be met in order to receive an education award. When an AmeriCorps member successfully completes a term of national service, a designated program official certifies that the service was completed and the individual is eligible for an education award.

Submission of the Exit Form provides legal certification for the disbursement of an education award to an AmeriCorps member. It is the document by which an authorized program official at an AmeriCorps program site indicates whether an AmeriCorps member is eligible for an education award.

Additional information requested on the form includes the member's service completion date, the current address where the education award documentation should be mailed, and two questions regarding the member's desire for post service information.

The Corporation proposes the following changes to the form:

- Eliminate the ten evaluation questions that are on the form currently being used. The Corporation's Evaluation Division has decided that relevant evaluation data will be collected through surveys.
- Revise question 11 on the current form to incorporate two other post-service opportunities for former AmeriCorps members. Reorganize the question/response options to make the item clearer and to eliminate repetitive language.
- Eliminate the Permanent Address. A Permanent Address is collected from the Enrollment form. It does not change nearly as frequently as does the member's Current Mailing Address, which is the address where the member's education award is mailed. The Permanent Address is used if mail is returned to the Corporation because of an incorrect Current Address. By not asking for an update of the Permanent Address, the entire Exit Form can be included on two sides of one page, a definite advantage.

Future Data Collection for Americorps Programs

In 1999, the Corporation began using an electronic system to both enroll and exit AmeriCorps members. Many local programs can enter into a database information about their members' enrollment and completion of service. They can use the two forms to obtain the information from their participants and enter it into their databases. This data is periodically transferred to the Corporation's database where it becomes the official record. This transfer is currently being done on a weekly basis.

As of the time of this submission, more than fifty percent of the nation's AmeriCorps programs use this system. The Corporation would like to have all programs use it, since it ultimately speeds up both collecting information and issuing education awards to members who have successfully

completed their terms of service. However, many AmeriCorps programs, especially smaller ones, do not have the technological resources to afford the computer hardware and software.

The Corporation does not want to exclude any competent, otherwise qualified organizations from participating as a sponsor, so it is possible that there may always be a small number of organizations that will use forms.

Dated: September 27, 2000.

Charlene Dunn,

Director, National Service Trust.

[FR Doc. 00-25366 Filed 10-2-00; 8:45 am]

BILLING CODE 6050-28-P

DEPARTMENT OF DEFENSE**Department of the Navy****Meeting of the Board of Visitors of Marine Corps University**

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Board of Visitors of the Marine Corps University (BOV MCU) will meet to review, develop and provide recommendations on all aspects of the academic and administrative policies of the University; examine all aspects of professional military education operations; and provide such oversight and advice as is necessary to facilitate high educational standards and cost effective operations. The Board will be reviewing the fiscal plan for next year, the University's Facilities Master Plan, Board presiding officer restrictions contained in the regional accrediting guidelines, and the status of the review and update of the Board By-laws. All sessions of the meeting will be open to the public.

DATES: The meeting will be held on Monday and Tuesday November 13-14, 2000 from 9 a.m. to 4 p.m.

ADDRESSES: The meeting will be held at the Marine Corps University Research Center, 2040 Broadway Street, Room 164, Quantico, VA 22134.

FOR FURTHER INFORMATION CONTACT:

Garry Smith, Executive Secretary, Marine Corps University Board of Visitors, 2076 South Street, Quantico, VA 22134, (703) 784-4037.

Dated: September 22, 2000.

J.L. Roth,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 00-25361 Filed 10-2-00; 8:45 am]

BILLING CODE 3810-FF-P

DEPARTMENT OF EDUCATION

Notice Establishing Deadlines for the Submission of Requests for Waivers That Would Directly Affect School-Level Activities

SUMMARY: In this notice, the Assistant Secretary for Elementary and Secondary Education establishes deadlines for the submission of waiver requests under section 14401 and 1113(a)(7) of the Elementary and Secondary Education Act of 1965 (ESEA), section 311(a) of the Goals 2000: Educate America Act, and section 502 of the School-to-Work Opportunities Act of 1994.

DATES: Deadlines: Except in extraordinary circumstances, the following deadlines apply to requests for waivers affecting school-level activities:

Requests for waivers that would be implemented in the semester immediately following January 1, 2001 must be submitted no later than October 30, 2000.

Requests for waivers that would be implemented in the beginning of the 2001–2002 school year must be submitted no later than April 1, 2001.

SUPPLEMENTARY INFORMATION: These deadlines apply only to waivers that would directly affect school-level activities. For example, the deadlines would apply to requests for waivers of the Title I targeting provisions or of the minimum poverty threshold required for implementation of a schoolwide program. However, the deadlines would not apply to waivers of requirements relating to the consolidation of administrative funds.

Waiver applicants are encouraged to submit their requests as early as possible and not wait until the deadlines to seek waivers. The requests will be reviewed upon receipt. For purposes of this notice, the submission date is the date that the waiver request is received by the U.S. Department of Education (Department) in substantially approvable form. A waiver request is considered to be in substantially approvable form when it has adequately addressed the applicable statutory criteria governing waivers.

During the period of a waiver request is under review by the Department, a waiver applicant must continue to comply with the requirement that is the subject of the waiver request.

Address for Submission of Requests: All requests for waivers should be submitted to the following address: Assistant Secretary for Elementary and Secondary Education, Attention: Waiver Staff, 400 Maryland Avenue, S.W., Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT:

Information on waivers may be obtained from the Department's Waiver Assistance Line at (202) 401-7801. Copies of the Department's updated waiver guidance, which provide a examples of waivers and describes how to apply for a waiver, are available at this number. The guidance, along with other information on flexibility, is also available at the Department's World Wide Web site at <http://www.ed.gov/flexibility>.

If you use a telecommunication device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1-888-877-8339.

Individuals with disabilities may obtain this document in an alternative format, (e.g., Braille, large print, audiotape, or computer diskette) on request to William Wooten at (202) 260-1922.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

<http://ocfo.ed.gov/fedreg.htm>

<http://www.ed.gov/news.html>

To use PDF you must have Adobe Acrobat Reader, which is available free at either of the previous sites. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1-800-293-6498; or in the Washington, DC, area at (202) 512-1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: <http://www.access.gpo.gov/nara/index.html>.

Dated: September 28, 2000.

Michael Cohen,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 00-25383 Filed 10-2-00; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF EDUCATION

DEPARTMENT OF LABOR

Office of School-to-Work Opportunities; Advisory Council for School-to-Work Opportunities; Notice of Open Meeting

SUMMARY: The Advisory Council for School-to-Work Opportunities was established by the Departments of Education and Labor to advise the Department on implementation of the

School-to-Work Opportunities Act. The Council shall assess the progress of School-to-Work (STW) Opportunities systems development and program implementation; make recommendations regarding progress and implementation of the School-to-Work Opportunities initiative; advise on the effectiveness of the Federal role in providing venture capital to States and localities to develop STW system and act as advocates for implementing the STW on behalf of their stakeholders.

Time and Place: The Advisory Council for School-to-Work Opportunities will have an open meeting on Thursday, October 12, 2000 from 3:30 pm to 7:00 pm and on Friday, October 13, 2000, from 8:30 am to 12:00 noon. The meeting will be held at the Hotel George, Leaders Room, 15 E Street, N.W., Washington, DC 20001.

Agenda: The agenda for the meeting on Thursday, October 12 opens with remarks by the Co-Chairs of the Advisory Council Jacquelyn Belcher, President, Perimeter College of Decatur, Georgia and John McKernan, Vice-President of the Education Management Corporation, Portland, Maine. Following the opening, the Council will meet with representatives of the National School-to-Work to discuss issues related to the national leadership and sustainability of the STW initiative and to hear presentations from Council members on this topic. Friday, October 13 the Advisory Council will meet in small group working sessions from 8:30 a.m. to 11:00 a.m. These will be followed by a report-out to representatives of the Department of Education and Labor.

Public Participation: The meetings on Thursday, October 12 and Friday, October 13 will be open to the public. Seats will be reserved for the media. Individuals with disabilities in need of special accommodations should contact the Designated Federal Official (DFO), listed below, at least 7 days prior to the meeting.

FOR ADDITIONAL INFORMATION CONTACT:

Stephanie J. Powers, Designated Federal Official (DFO), Advisory Council for School-to-Work Opportunities, Office of School-to-Work Opportunities, 400 Virginia Avenue, S.W., Room 210, Washington, DC, 202-401-6222. (This is not free number.)

Due to the schedules of the participants, we are unable to provide the full 15 days of advance notice of this meeting.

Signed at Washington, D.C., this 27th day of September, 2000.

Raymond L. Bramucci,

Assistant Secretary for Employment and Training.

Patricia W. McNeil,

Assistant Secretary for Vocational and Adult Education.

[FR Doc. 00-25355 Filed 10-2-00; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00-561-000]

Algonquin Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

September 27, 2000.

Take notice that on September 22, 2000, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheets, to be effective on October 15, 2000:

First Revised Sheet No. 93

First Revised Sheet No. 935

Algonquin states that the purpose of this filing is to modify the LINKr System Agreement contained in Sheet Nos. 930 through 935 of the Tariff to add East Tennessee Natural Gas Company to the list of companies utilizing this agreement, as East Tennessee is now an affiliate of Algonquin, and to remove Panhandle Eastern Pipe Line Company (Panhandle) and Trunkline Gas Company (Trunkline) from that list, as Panhandle and Trunkline are no longer affiliates of Algonquin.

Algonquin states that copies of its filing have been mailed to all affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public

inspection in the Public Reference Room. This filing may be viewed on the web at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00-25313 Filed 10-2-00; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC00-133-000]

American National Power, Inc.; Notice of Filing

September 27, 2000.

Take notice that on September 20, 2000, American National Power, Inc. (ANP) filed additional information with the Federal Energy Regulatory Commission (Commission) to supplement its filing of September 1, 2000, in this proceeding. The additional information provided in the supplement is in fulfillment of the Exhibit H filing requirement set forth in Section 33.3 of the Commission's Rules and Regulations (18 CFR 33.3). ANP also requests that the supplemental material be given confidential treatment and withheld from public disclosure pursuant to 18 CFR 388.112.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before October 5, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the Internet at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00-25310 Filed 10-2-00; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00-563-000]

Chandeleur Pipe Line Company; Notice of Compliance Filing

September 27, 2000.

Take notice that on September 25, 2000, Chandeleur Pipe Line Company tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to become effective November 1, 2000.

Third Revised Sheet No. 43

First Revised Sheet No. 43A

Chandeleur Pipe Line Company asserts that the purpose of this filing is to comply with the Commission's orders issued February 9, 2000, May 19, 2000 and July 26, 2000 in Docket Nos. RM98-10-005 and RM98-12-005, *et al.* (Orders 637, 637-A and 637-B).

Proposed tariff changes are to conform Chandeleur's tariff language addressing Right of First Refusal and the terms of the Temporary Waiver of Maximum Rate Ceiling in compliance with Commission's Regulations in Sec. 284.221 and Sec. 284.8, respectively. A minor housekeeping change is made due to the Reorganization of Part 284 Regulations in Order 637.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00-25314 Filed 10-2-00; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory
Commission

[Docket No. RP00-450-001]

Natural Gas Pipeline Company of
America; Notice of Compliance Filing

September 27, 2000.

Take notice that on September 22, 2000, Natural Gas Pipeline Company of America (Natural) tendered for filing to be part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Substitute Second Revised Sheet No. 62, to be effective September 11, 2000.

Natural states that the tariff sheet was filed in compliance with the Commission's "Order Accepting Tariff Sheets Subject to Conditions" issued September 8, 2000, in Docket NO. RP00-450-000 (Order) related to revisions to its General Terms and Conditions, Rate Schedules FRSS, FTS, IBS and DSS and the pro forma service agreement.

Natural requests any waivers of the Commission's Regulations to the extent necessary to permit the tariff sheet submitted herein to become effective September 11, 2000, consistent with the Order.

Natural states that copies of the filing have been mailed to all parties set out on the Commission's official service list in Docket No. RP00-450.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00-25312 Filed 10-2-00; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory
Commission

[Project Nos. 2232-381, 2331-014, 2332-021, 2503-048, 2740-041 North and South Carolina]

Duke Energy Corporation; Notice of
Availability of Environmental
Assessment

September 27, 2000.

An environmental assessment (EA) is available for public review. The EA analyzes the environmental impacts of approving Duke Energy Corporation's (Duke) excavation programmatic agreement (PA) for the above five projects located in North and South Carolina. These projects include the following 16 reservoirs: Lake James, Rodhiss, Hickory, Lookout Shoals, Norman, Mountain Island, Wylie, Fishing Creek, Great Falls, Rocky Creek, Wateree, Ninety-Nine Islands, Gaston Shoals, Jocassee, Keowee and Bad Creek.

In its PA, Duke requests authority to grant permits to excavate up to 2,000 cubic yards (cy) of lakebottom sediments without obtaining prior Commission approval. Duke also asks for authority to grant permits for maintenance excavations involving any amount of sediment. Maintenance excavations are defined in the PA. Applicants would still have to obtain all other necessary local, state and federal permits and many other restrictions apply.

The EA was written by staff in the Office of Energy Projects, Federal Energy Regulatory Commission. In the EA, Commission staff conclude that approving the PA and granting Duke the requested authority would not constitute a major federal action significantly affecting the quality of the human environment. Copies of the EA can be viewed on the web at www.ferc.fed.us/online/rims.htm. Call (202) 208-2222 for assistance. Copies are also available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208-1371.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00-25331 Filed 10-2-00; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory
Commission

[Docket No. CP00-394-000]

William Gas Pipelines Central, Inc.;
Notice of Intent To Prepare an
Environmental Assessment for the
Proposed Pampa Pipeline (Line G)
Abandonment Project, and Request for
Comments on Environmental Issues

September 27, 2000.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the abandonment of facilities proposed in the Williams Gas Pipelines Central, Inc. (Williams) Pampa Pipeline (Line G), also known as the Wichita-Ottawa line, Abandonment Project in Butler, Chase, and Lyon Counties, Kansas.¹ These facilities consist of about 64.3 miles of 16- and 20-inch-diameter pipeline. The EA will be used by the Commission in its decision-making process to determine whether the project in the public convenience and necessity.

If you are a landowner on Williams' existing Line G pipeline and receive this notice, you may be contacted by a pipeline company representative about the proposed abandonment of facilities. The pipeline company would seek to negotiate a mutually acceptable agreement in regards to additional work space for pipe staging areas needed for the proposed abandonment of facilities. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" was attached to the project notice Williams provided to landowners along the Line G route. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet website (www.ferc.fed.us).

This Notice of Intent (NOI) is being sent to landowners of property crossed by Williams' Line G; Federal, state, and

¹ Williams' application was filed with the Commission on June 21, 2000, under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

local agencies; elected officials; environmental and public interest groups; Indian tribes that might attach religious and cultural significance to historic properties in the area of potential effects; local libraries and newspapers; and the Commission's list of parties to the proceeding. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

Additionally, with this NOI we² are asking those Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the EA. These agencies may choose to participate once they have evaluated Williams' proposal relative to their agencies' responsibilities. Agencies who would like to request cooperating status should follow the instructions for filing comments described below.

Summary of the Proposed Project

In an ongoing effort to eliminate old, high maintenance pipelines on its system, Williams is proposing to abandon by sale for reclaim another portion of the Pampa 20-inch pipeline extending from El Dorado, Kansas to Neosho Rapids, Kansas (Line G). Over the years, the Pampa line has been the source of thousands of leaks and high maintenance costs, primarily at the couplings. In view of the age of the line and the construction techniques used, it is anticipated that Williams would have ongoing problem with this pipeline. Accordingly, Williams has determined that the best course of action is to continue to abandon the Pampa line when opportunity arises.

Williams proposes to abandon by sale about 64.3 miles of its Line G, consisting of 59.4 miles of 20-inch-diameter pipeline and 4.9 miles of 16-inch-diameter pipeline. The purchaser would, in turn, reclaim about 57.1 miles of pipeline (4.5 miles of 16-inch-diameter pipeline and 52.6 miles of 20-inch-diameter pipeline) for salvage and would abandon in place about 7.2 miles of pipeline (0.4 mile of 16-inch-diameter pipeline and 6.8 miles of 20-inch-diameter pipeline).

The pipeline would be abandoned in place at road and railroad crossings, all waterbody and wetland crossings, and any other environmentally sensitive locations (e.g., residences), unless the

pipe is exposed and is causing a safety hazard.

Due to a few landowners requesting that the pipeline be abandoned in place on their property, Williams is now in the process of evaluating the amount of pipe that might be reclaimed versus what might be abandoned in place and contacting a possible purchaser to estimate a market value. Should the results indicate that the benefits of reclaiming the pipeline are negligible or outweighed by abandoning the pipe in place, then Williams shall reconsider the current application.

The general location of Williams' proposed facilities is shown on the map attached as appendix 2.³

Land Requirements for Abandonment by Removal

The current permanent right-of-way width is 66 feet. Removal of the proposed facilities would require about 462 acres of land, of which 5.2 acres would be used for additional work space needed for temporary storage of the reclaimed pipe until it can be loaded onto trucks and removed from the area. Upon completion of the removal project the current permanent right-of-way and additional work space no longer be required and the land would be restored and would revert back to the landowner and its former use.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this "scoping." The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this NOI, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state,

³ The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available on the Commission's website at the "RIMS" link or from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE, Room 2A, Washington, DC 20426, or call (202) 208-1371. For instructions on connecting to RIMS to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

and local agencies, elected officials, affected landowners, regional public interest groups, Indian tribes, local newspapers and libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

Currently Identified Environmental Issues

The EA will discuss impacts that could occur as a result of abandonment of the proposed project. Landowners requesting that the pipeline on their property be abandoned in place has been identified as an issue that we think deserves attention based on a preliminary review of the proposed facilities and the environmental information provided by Williams.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentator your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal, and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send original and two copies of your letter to: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;
 - Label one copy of the comments for the attention of Environmental Gas Group 1, PJ-11.1;
 - Reference Docket No. CP00-394-000; and
 - Mail your comments so that they will be received in Washington, DC on or before October 30, 2000.
- [If you do not want to send comments at this time but still want to remain on our mailing list, please return the Information Request (appendix 3). If you do not return the Information Request, you will be removed from the environmental mailing list.]

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an "intervenor." Intervenor's play a more formal role in

² "We," "us," and "our" refer to the environment staff of the Office of Energy Projects, part of the Commission staff.

the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2). Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Additional information about the proposed project is available from the Commission's Office of External Affairs at (202) 208-0004 or on the FERC website (www.ferc.fed.us) using the "RIMS" link to information in this docket number. Click on the "RIMS" link, select "Docket #" from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208-2222.

Similarly, the "CIPS" link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the "CIPS" link, select "Docket #" from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208-2474.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00-25309 Filed 10-2-00; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Land and Shoreline Management Plan

September 27, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

- a. *Application Type*: Land and Shoreline Management Plan.
- b. *Project No.*: 1417-080.
- c. *Date Filed*: July 28, 2000; supplemented August 14, 2000.
- d. *Applicant*: Central Nebraska Public Power and Irrigation District.
- e. *Name of Project*: Kingsley Dam Hydroelectric Project.
- f. *Location*: The Kingsley Dam Project is located on the North Platte and Platte Rivers in Keith, Lincoln, Dawson and Gosper Counties, Nebraska.
- g. *Applicant Contact*: Mr. Jeremiah (Jay) L. Maher, Central Nebraska Public Power and Irrigation District, P.O. Box 740, 415 Lincoln Street, Holdrege, NE 68949.
- h. *FERC Contact*: Questions about this notice can be answered by Steve Hocking at (202) 219-2656 or e-mail address: steve.hocking@ferc.fed.us. Please note the Commission cannot accept comments, recommendations, motions to intervene or protests sent by e-mail; these documents must be filed as described below.

- i. Deadline for filing comments, recommendations, motions to intervene and protests: October 30, 2000.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

- j. *Description of the Application*: Central Nebraska Public Power and Irrigation District (Central), licensee for the Kingsley Dam Hydroelectric Project, filed a Land and Shoreline Management Plan (LSMP) for Commission approval. Central filed the plan to satisfy the requirements of article 421 of its license issued July 29, 1998. The LSMP addresses: (1) those project lands and shorelines that are and will be reserved for present and future wildlife, public recreation, residential, agricultural and other uses; (2) proposed changes in land use; (3) the protection of least tern and piping plover nesting sites at Lake McConaughy; (4) the need to protect bald eagle perch and roost sites on project lands; (5) the need to control aquatic vegetation and sedimentation in project reservoirs; (6) the use of project

lands and shorelines designated for public recreation and; (7) Central must update the LSMP every 5 years.

- k. *Locations of the application*: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room at 888 First Street NE, Room 2A, Washington, DC 20426, or by calling (202) 208-1371. The application may be viewed on the web at <http://www.ferc.fed.us/online/rims.htm>. Call (202) 208-2222 for assistance.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS," "RECOMMENDATIONS FOR TERMS AND CONDITIONS," "PROTEST," or "MOTION TO INTERVENE," as applicable, and the Project Number (P-1417-080) of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00-25311 Filed 10-2-00; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY**[FRL-6880-1]****Agency Information Collection Activities: Submission for OMB Review; Comment Request, National Emission Standards for Hazardous Air Pollutants (NESHAP)/Maximum Achievable Control Technology (MACT) for Source Categories Mineral Wool Production****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: NESHAP/MACT Subpart DDD, National Emission Standards for Hazardous Air Pollutants/Maximum Achievable Control Technology (MACT) for Wool Manufacturing, OMB Control Number 2060-0362, expiration date 10/31/00. This ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before November 2, 2000.

ADDRESSES: Send comments, referencing EPA ICR No. 1799.02 and OMB Control No. 2060-0362, to the following addresses: Sandy Farmer, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822), 1200 Pennsylvania Avenue, N.W., Washington, DC 20460; and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Sandy Farmer at EPA by phone at (202) 260-2740, by E-Mail at Farmer.Sandy@epamail.epa.gov or download off the Internet at <http://www.epa.gov/icr> and refer to EPA ICR No. 1799.02. For technical questions about the ICR contact Gregory Fried at EPA by phone at (202) 564-7016 or by email at fried.gregory@epa.gov.

SUPPLEMENTARY INFORMATION:

Title: ICR for NESHAP/MACT Subpart DDD, National Emission Standards for Hazardous Air Pollutants—Mineral Wool Production, OMB Control Number 2060-0362, EPA ICR No. 1799.02. This

is a request for extension of a currently approved collection.

Abstract: The Administrator has judged that Particulate Matter (PM) and Hazardous Air Pollutants (HAP) emissions from mineral wool production plants cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Owners/operators of mineral wool production plants subject to NESHAP/MACT Subpart DDD must provide notifications to EPA of construction, modification, startups, shut downs, date and results of initial performance tests and provide semiannual reports of excess emissions. Owners/operators of mineral wool production plants are required to install fabric filter bag leak detection systems and then initiate corrective action procedures in the event of an operating problem. Owners/operators of mineral wool production plants subject to NESHAP/MACT Subpart DDD must also continuously monitor and record, (1) The operating temperature of each thermal incinerator, (2) cupola production (melt) rate, and (3) for each curing oven, the formaldehyde content of each binder formulation used to manufacture bonded products. In order to ensure compliance with the standards promulgated to protect public health, adequate reporting and recordkeeping is necessary. In the absence of such information enforcement personnel would be unable to determine whether the standards are being met on a continuous basis, as required by the Clean Air Act.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published 3/31/00 (65 FR 17258); no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 222 hours per response. The initial burden regarding notifications (40 CFR 63.9) and performance testing (40 CFR 63.7) for a new source subject to this subpart is estimated to average 615 hours. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire,

install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Wool Fiberglass Manufacturing Plants.

Estimated Number of Respondents: 13.

Frequency of Response: Initial and semiannual.

Estimated Total Annual Hour Burden: 5,779 hours.

Estimated Total Annualized Capital and Operating & Maintenance Cost Burden: \$100,226.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1799.02 and OMB Control No. 2060-0362 in any correspondence.

Dated: September 28, 2000.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 00-25348 Filed 10-2-00; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY**[FRL-6879-9]****Agency Information Collection Activities: Submission for OMB Review; Comment Request, Registration of Fuels and Fuel Additives: Requirements for Manufacturers****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Registration of Fuels and Fuel Additives: Requirements for Manufacturers (40 CFR 79), OMB Control Number 2060-0150 expiration

date 12/31/2000. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before November 2, 2000.

ADDRESSES: Send comments, referencing EPA ICR No. 0309.10 and OMB Control No. 2060-0150, to the following addresses: Sandy Farmer, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822), 1200 Pennsylvania Avenue, N.W., Washington, DC 20460; and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, N.W., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Sandy Farmer at EPA by phone at (202) 260-2740, by E-mail at

Farmer.sandy@epamail.epa.gov, or download off the Internet at <http://www.epa.gov/icr> and refer to EPA ICR No. 0309.10. For technical questions about the ICR contact James W. Caldwell, (202) 564-9303, fax (202) 565-2085, caldwell.jim@epa.gov.

SUPPLEMENTARY INFORMATION:

Title: Registration of Fuels and Fuel Additives: Requirements for Manufacturers (40 CFR 79), OMB Control Number 2060-0150, EPA ICR Number 0309.10, expiring 12/31/2000. This is a request for an extension of a currently approved collection.

Abstract: Motor vehicles are the major source of air pollution in most urban areas. The Clean Air Act provides the authority to monitor and regulate motor vehicle fuels, additives, and emissions in order to protect public health. Pursuant to the regulations at 40 CFR 79, manufacturers of gasolines, diesel fuels, and additives for those fuels, are required to have their products registered by the EPA prior to their introduction into commerce. This mandatory collection involves providing certain compositional, emissions, and health-related information. A manufacturer may not sell its fuel or additive until it has been registered. The EPA uses this information to identify fuels and additives whose emissions may pose a health risk and as a basis for regulatory action. Most of the compositional information is confidential due to the competitive nature of the fuel and additive industries.

Registration involves providing (1) a chemical description of the fuel or additive, (2) certain technical and marketing information, and (3) any

health-effects information in company files. (The portion of this registration regulation requiring the development of health-effects data is covered by a separate information collection; OMB Control Number 2060-0297, EPA ICR Number 1696.03) Manufacturers are also required to submit periodic reports on production and related information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 7-11-00, 65 FR 42689. No comments were received.

Burden Statement: The annual public reporting and record keeping burden for this collection of information is estimated to average 2 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Manufacturers of gasolines, diesel fuels, and fuel additives.

Estimated Number of Respondents: 780.

Frequency of Response: On occasion, quarterly, annually.

Estimated Total Annual Hour Burden: 18,500 hours.

Estimated Total Annualized Capital, O&M Cost Burden: \$27,600.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the addresses listed above. Please refer to EPA ICR No. 0309.10 and OMB Control No. 2060-0150 in any correspondence.

Dated: September 28, 2000.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 00-25349 Filed 10-2-00; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-6880-2]

Notice of Proposed Administrative Settlement Pursuant To The Comprehensive Environmental Response, Compensation, and Liability Act

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement concerning the Eagle Picher Henryetta Superfund Site, ("Site") with the Oklahoma Department of Environmental Quality, ("ODEQ") the City of Henryetta, Oklahoma, ("ACity"), and the United States Environmental Protection Agency ("EPA").

The settlement requires the City to assume future operation and maintenance of the remedy at the Site, record a Notice of Deed Restriction in the property records, and preserve EPA's and ODEQ's right of access.

As soon as reasonably practicable after the effective date of this Agreement, and consistent with Paragraph 26 of the Settlement Agreement, the City shall file in the land records of Okmulgee County a Notice of Deed Restriction notifying subsequent purchasers of the smelter facility portion of the Site that hazardous substances were disposed and will continue to remain in the soils at the former smelter facility.

The settlement includes a covenant not to sue under Section 107 of CERCLA, 42 U.S.C. 9607.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may withdraw or withhold its consent to the proposed settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public

inspection at 1445 Ross Avenue, Dallas, Texas 75202-2733.

DATES: Comments must be submitted on or before November 2, 2000.

ADDRESSES: The proposed settlement and additional background information relating to the settlement are available for public inspection at 1445 Ross Avenue, Dallas, Texas 75202-2733. A copy of the proposed settlement may be obtained from Barbara J. Aldridge (6SF-AC), U.S. Environmental Protection Agency Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733 at (214) 665-2712. Comments should reference the Eagle Picher Henryetta Superfund Site, Henryetta, Oklahoma, and EPA Docket Number 6-05-2000, and should be addressed to Tracy Sheppard at the address listed below.

FOR FURTHER INFORMATION CONTACT: Tracy Sheppard (6RC-S), U.S. Environmental Protection Agency 1445 Ross Avenue, Dallas, Texas 75202-2733 at (214) 665-8018.

Dated: September 20, 2000.

Pamela Phillips,

Acting Regional Administrator.

[FR Doc. 00-25350 Filed 10-2-00; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-6880-3]

Proposed CERCLA Administrative Cost Recovery Settlement; in Re: The Former Three-C Electrical Company; Inc. Superfund Site, Ashland, Massachusetts

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement for recovery of past response costs concerning the Former Three-C Electrical Company, Inc. Superfund site in Ashland, Massachusetts, with the following settling party: Three-C Electrical Company, Inc. The settlement requires the settling parties to pay \$45,000 to the Hazardous Substance Superfund. The settlement includes a covenant not to sue the settling parties pursuant to Section 107(a) of CERCLA, 42 U.S.C. 9607(a). For thirty (30) days following the date of publication of this notice, the Agency will receive written

comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection with the Regional Docket Clerk, U.S. Environmental Protection Agency, Region I, One Congress Street, Suite 1100, Mailcode RCG, Boston, Massachusetts (U.S. EPA Docket No. CERCLA 1-2000-0019).

DATES: Comments must be submitted on or before November 2, 2000.

ADDRESSES: The proposed settlement is available for public inspection with the Regional Docket Clerk, One Congress Street, Boston, Massachusetts. A copy of the proposed settlement may be obtained from RuthAnn Sherman, U.S. Environmental Protection Agency, Region I, One Congress Street, Suite 1100, Mailcode SES, Boston, Massachusetts 02214, (617) 918-1886. Comments should reference the Former Three-C Electrical Company, Inc. Superfund Site, Ashland, Massachusetts and EPA Docket No. 1-2000-0019 and should be addressed to the Docket Clerk, U.S. Environmental Protection Agency, Region I, One Congress Street, Suite 1100, Mailcode RCG, Boston, Massachusetts 02214.

FOR FURTHER INFORMATION CONTACT: RuthAnn Sherman, U.S. Environmental Protection Agency, Region I, One Congress Street, Suite 1100, Mailcode SES, Boston, Massachusetts 02214, (617) 918-1886.

Dated: September 18, 2000.

Patricia L. Meaney,

Director, Office of Site Remediation and Restoration.

[FR Doc. 00-25347 Filed 10-2-00; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

September 25, 2000.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. An agency may not conduct or sponsor a

collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before November 2, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1-A804, 445 12th Street, S.W., Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418-0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060-0780.

Title: Uniform Rate-Setting Methodology.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; and State, local, or tribal government.

Number of Respondents: 160.

Estimate Time Per Response: 20 to 50 hours.

Frequency of Response: On occasion reporting requirements.

Total Annual Burden: 3,500 hours.

Total Annual Costs: None.

Needs and Uses: The uniform rates proposals will be filed with the Commission and served on all affected local franchise areas (LFAs). The Commission will review the rate proposals, comments received from the LFAs, and replies received from cable operators in considering whether the interests of subscribers will be protected under the new rate proposal.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00-25356 Filed 10-2-00; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

September 26, 2000.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before November 2, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1-A804, 445 12th Street, S.W., Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418-0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060-0093.

Title: Application for Renewal of Radio Station License in Specified Services.

Form Number: FCC 405.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 2,500.

Estimate Time Per Response: 2.25 hours.

Frequency of Response: On occasion reporting requirements.

Total Annual Burden: 5,625.

Total Annual Costs: None.

Needs and Uses: As required by 47 CFR Parts 5, 21, 23, and 25 of the Commission's Rules, FCC Form 405 is used by common carriers and Multipoint Distribution Service (MDS) non-common carriers to apply for renewal of radio station licenses. Section 307(c) of the Communications Act limits the term of common carrier radio licenses to ten years and requires that written applications be submitted for renewal.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00-25357 Filed 10-2-00; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

Background

SUMMARY: Notice is hereby given of the final approval of proposed information collections by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83-Is and supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Mary M. West—Division of Research and Statistics, Board of

Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3829); OMB Desk Officer—Alexander T. Hunt—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202-395-7860).

Final Approval Under OMB Delegated Authority of the Extension for Three Years, Without Revision, of the Following Reports

1. *Report title:* The HMDA Loan/ Application Register.

Agency form number: FR HMDA-LAR.

OMB Control number: 7100-0247.

Frequency: Annual.

Reporters: State member banks, subsidiaries of state member banks, subsidiaries of bank holding companies, U.S. branches and agencies of foreign banks (other than federal branches, federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations under section 25 or 25A of the Federal Reserve Act.

Annual reporting hours: 121,714 hours.

Estimated average hours per response: Banks, 202 hours; mortgage subsidiaries, 160 hours.

Number of respondents: Banks, 517; mortgage subsidiaries, 108 hours.

Small businesses are not affected.

General description of report: This information collection is mandatory (12 U.S.C. 2801 *et seq.*). The data are not given confidential treatment, however, information that might identify individual borrowers or applicants is given confidential treatment under exemption 6 of the Freedom of Information Act (5 U.S.C. 552(b)(6)).

Abstract: The Federal Reserve's Regulation C, including the information collection, applies both to depository and to for-profit non-depository institutions. The information reported and disclosed pursuant to this collection is used to further the purposes of HMDA. These include: (1) to help determine whether financial institutions are serving the housing needs of their communities; (2) to assist public officials in distributing public-sector investments so as to attract private investment to areas where it is needed; and (3) to assist in identifying possible discriminatory lending patterns and enforcing anti-discrimination statutes.

2. *Report title:* International Applications and Prior Notifications Under Subpart B of Regulation K.
Agency form number: FR K-2.

OMB Control number: 7100-0284.
 Frequency: Event-generated.
 Reporters: Foreign banks.
 Annual reporting hours: 600 hours.
 Estimated average hours per response: 40 hours.

Number of respondents: 15.

Small businesses are not affected.

General description of report: This information collection is required to obtain or retain a benefit sections 7 and 10 of the International Banking Act (12 U.S.C. 3105 and 3107). The applying organization has the opportunity to request confidentiality for information that it believes will qualify for a Freedom of Information Act exemption.

Abstract: Foreign banks are required to obtain the prior approval of the Federal Reserve to establish a branch, agency, or representative office or to acquire ownership or control of a commercial lending company in the United States or to change the status of any existing office in the United States. The Federal Reserve needs the information to fulfill its statutory obligation to supervise foreign banking organizations with offices in the United States.

Board of Governors of the Federal Reserve System, September 27, 2000.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 00-25317 Filed 10-2-00; 8:45 am]

BILLING CODE 6210-01-P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11 am, Tuesday, October 10, 2000.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202-452-3204.

SUPPLEMENTARY INFORMATION: You may call 202-452-3206 beginning at approximately 5 pm two business days before the meeting for a recorded announcement of bank and bank

holding company applications scheduled for the meeting; or you may contact the Board's Web site at <http://www.federalreserve.gov> for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: September 29, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00-25491 Filed 9-29-00; 3:26 pm]

BILLING CODE 6210-01-P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Requests Extension

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: The information collection requirements described below will be submitted to the office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act (PRA). The Federal Trade Commission (FTC) is soliciting public comments on its proposal to extend through January 31, 2004 the current PRA clearance for information collection requirements contained in its Mail or Telephone Order Merchandise Trade Regulation Rule, 16 CFR Part 435 (MTOR or "Rule"). That clearance expires on January 31, 2001.

DATES: Comments must be filed by December 4, 2000.

ADDRESSES: Send comments to Secretary, Federal Trade Commission, Room H-159, 600 Pennsylvania Ave., NW., Washington, DC 20580. All comments should be captioned "Mail or Telephone Order Merchandise Trade Regulation Rule: Paperwork comment."

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be addressed to Joel N. Brewer, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Room S-4632, 601 Pennsylvania Ave., NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501-3520), Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. "Collection of information" means agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3), 5 CFR 1320.3(c). As required by section 3506(c)(2)(A) of the PRA, the FTC is providing this opportunity for

public comment before requesting that OMB extend the existing paperwork clearance for the MTOR.

The FTC invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The Mail Order Merchandise Rule (MOR) was promulgated in 1975 in response to consumer complaints that many merchants were failing to ship mail order merchandise on time, failing to ship at all, or failing to provide prompt refunds for unshipped merchandise. The MOR took effect on February 2, 1976. A second rulemaking proceeding in 1993 demonstrated that the delayed shipment and refund problems of the mail order industry were also being experienced by consumers who ordered merchandise over the telephone. The Commission amended the MOR, effective on March 1, 1994, to include merchandise ordered by telephone, including by telefax or by computer through the use of a modem, and renamed the Rule to cover "Mail or Telephone Order Merchandise." The Rule therefore includes orders placed through the Internet.

Generally, the MTOR requires a merchant to: (1) Have a reasonable basis for any express or implied shipment representation made in soliciting the sale; (2) ship within the time period promised and, if no time period is promised, within 30 days; (3) notify the consumer and obtain the consumer's consent to any delay in shipment; and (4) make prompt and full refunds when the consumer exercises a cancellation option or the merchant is unable to meet the Rule's other requirements.

The notice provisions in the Rule require a merchant who is unable to ship within the promised shipment time or 30 days to notify the consumer of a revised date and his or her right to cancel the order and obtain a prompt refund. Delays beyond the revised shipment date also trigger a notification requirement to consumers. When the

Rule requires the merchant to make a refund and the consumer has paid by credit card, the Rule also requires the merchant to notify the consumer either that any charge to the consumer's charge account will be reversed or that the merchant will take no action that will result in a charge.

Burden Statement

Estimated total annual hours burden: 2,753,000 hours (rounded up to the nearest thousand).

In its 1997 PRA notice and submission to OMB regarding the Rule, FTC staff estimated that 71,560 established companies each spend an average of 50 hours per year on compliance with the Rule, and that approximately 1,000 new industry entrants spend an average of 230 hours (an industry estimate) for compliance measures associated with start-up.¹ 62 FR 63717 (December 2, 1997). Thus, the total estimated hours burden was 3,808,000 hours $[(71,560 \times 50 \text{ hours}) + (1,000 \times 230 \text{ hours})]$.

No provisions in the Rule have been amended or changed in any manner since staff's 1997 PRA submission to OMB. Thus, all of the requirements relating to disclosure and notification remain the same. However, while staff's estimate of average time required by companies to comply with the Rule is unchanged, staff has reduced its estimate of total industry hours based on more current data revealing a smaller industry population than it previously accounted for. Based on 1999 Statistical Abstract data (the most current industry data available),² there are approximately 45,919 existing establishments subject to the Rule.

Staff, however, has increased its estimate of the number of new companies that enter the market each year from 1,000 to 1,985. This, too, is based on 1999 Statistical Abstract data. Thus, the current total of affected firms consists of approximately 47,904 established and new companies.

Accordingly, staff estimates total industry hours to comply with the MTOR is $[(45,919 \times 50 \text{ hours}) + (1,985 \times 230 \text{ hours})]$.

This is a conservative estimate. Arguably much of the estimated time burden for disclosure-related compliance would be incurred even absent the Rule. Industry trade associations and individual witnesses have consistently taken the position that

compliance with the Rule is widely regarded by direct marketers as being good business practice. The Rule's notification requirements would be followed in any event by most merchants to meet consumer expectations regarding timely shipment, notification of delay, and prompt and full refunds. Providing consumers with notice about the status of their orders fosters consumer loyalty and encourages repeat purchases, which are important to direct marketers' success. Thus, it appears that much of the time and expense associated with Rule compliance may not constitute "burden" under the PRA³ although the above estimates account for it as such.

In estimating PRA burden, staff considered "the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency." 5 CFR 1320.3(b)(1). This includes "developing, acquiring, installing, and utilizing technology and systems for the purpose of disclosing and providing information." 5 CFR 1320.3(b)(1)(iv). Although not expressly stated in the OMB regulation implementing the PRA, the definition of burden arguably includes upgrading and maintaining computer and other systems used to comply with a rule's requirements. Conversely, to the extent that these systems are used in the ordinary course of business independent of the Rule, their associated upkeep would fall outside the realm of PRA "burden."

The mail order industry has been subject to the basic provisions of the Rule since 1976 and the telephone order industry since 1994. Thus, businesses have had several years (and some have had decades) to integrate compliance systems into their business procedures. Since 1997 many businesses have upgraded the information management systems they need, in part, to comply with the Rule, and to more effectively track orders. These upgrades, however, mostly were needed to deal with growing consumer demand for merchandise resulting, in part, from increased public acceptance of making purchases over the telephone and, more recently, the Internet.

Accordingly, most companies now maintain records and provide updated order information of the kind required by the Rule in their ordinary course of business. Nevertheless, staff conservatively assumes that the time

devoted to compliance with the Rule by existing and new companies remains the same as in 1997.

Estimated labor costs: \$31,136,000, rounded to the nearest thousand.

Labor costs are derived by applying appropriate hourly cost figures to the burden hours described above. According to the 1999 Statistical Abstract, average payroll for "non-store catalogue and mail order houses" and "non-store direct selling establishments" rose \$0.322 per hour per year between 1991 and 1996. In 1996, average payroll was \$10.34 per hour. Assuming average payroll continued to increase \$0.322 per hour per year, in 1999 average payroll would have reached \$11.31 per hour. Because the bulk of the burden of complying with the MTOR is borne by clerical personnel, staff believes that the average hourly payroll figure for non-store catalogue and mail order houses and non-store direct selling establishments is an appropriate measure of a direct marketer's average labor cost to comply with the Rule. Thus, the total annual labor cost to new and established businesses in 1999 for Rule compliance is approximately \$31,136,000 $(2,753,000 \text{ hours} \times \$11.31/\text{hr.})$. Relative to direct industry sales, this total is negligible.⁴

Estimated annual non-labor cost burden: \$0 or minimal.

The applicable requirements impose minimal start-up costs, as businesses subject to the Rule generally have or obtain necessary equipment for other business purposes, *i.e.*, inventory and order management, customer relations. For the same reason, staff anticipates printing and copying costs to be minimal, especially given that telephone order merchants have increasingly turned to electronic communications to notify consumers of delay and to provide cancellation options. Staff believes that the above requirements necessitate ongoing, regular training so that covered entities stay current and have a clear understanding of federal mandates, but that this would be a small portion of and subsumed within the ordinary training that employees receive apart

¹ Most of the estimated start-up time relates to the development and installation of computer systems geared to more efficiently handle customer orders.

² Statistical Abstract of the United States, 119th edition, 1999, U.S. Department of Commerce, Economics and Statistics Administration.

³ Under the OMB regulation implementing the PRA, burden is defined to exclude any effort that would be expended regardless of any regulatory requirement. 5 CFR 1320.3(b)(2).

⁴ Projecting sales for "non-store catalogue and mail order houses" and "non-store direct selling establishments" (according to the 1999 Statistical Abstract) to all merchants subject to the MTOR, staff estimates that direct sales to consumers in 1999 would have been \$109.45 billion. Thus, the labor cost of compliance by existing and new businesses in 1999 would have amounted to .07% of sales.

from that associated with the information collected under the Rule.

Debra A. Valentine,
General Counsel.

[FR Doc. 00-25299 Filed 10-2-00; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Statement of Organization, Functions and Delegations of Authority; Program Support Center

Part P (Program Support Center) of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (60 FR 51480, October 2, 1995 as amended most recently at 64 FR 55731, October 14, 1999) is amended to reflect changes in Chapter PB within Part P, Program Support Center, Department of Health and Human Services. The Program Support Center is reorganizing and realigning the division level structure of the *Human Resources Service*, specifically those divisions performing information technology (IT) activities. The realignment will include the abolishment of three existing Divisions and the establishment of three new Offices: the *Office of Systems Management*, the *Office of Legacy Systems Oversight*, and the *Office of Enterprise Human Resource and Payroll Systems*.

Program Support Center

Under Part P, Section P-20, Functions, change the following:

Under *Chapter PB, Human Resources Service (PB)* delete the titles and functional statements for the *Systems Design and Analysis Division (PBB)*; *Systems Engineering and Maintenance Division (PBC)*; and *Systems Networking Division (PBH)* in their entirety. The functions of these divisions will be realigned within the *Office of Legacy Systems Oversight (PBW)*.

Establish the *Office of Systems Management (PBU)* and enter the functional statement as follows:

Office of Systems Management (PBU)

(1) Provides leadership in the development and management of the technology environment which supports the HRS human resource information and payroll systems; (2) Develops short- and long-range information technology plans, identifying HRS' goals and objectives, budget requirements, acquisition plans and anticipated future needs; (3) Provides leadership and overall direction for configuration

management services including systems designed to reduce errors and support parallel and concurrent development of system; (4) Oversees software acceptance testing, quality assurance and quality control functions for all new systems/subsystems, major enhancements and systems changes for human resource information systems; (5) Provides HRS-wide systems security support including contingency planning, system and network safeguards, and employee awareness; and (6) Provides administrative support to the HRS systems and payroll divisions and offices.

Establish the *Office of Enterprise Human Resource and Payroll Systems (PBV)* and enter the functional statement as follows:

Office of Enterprise Human Resource and Payroll Systems (PBV)

(1) Provides overall program leadership and direction to enterprise human resource and payroll systems for the Department; (2) Provides oversight in developing and implementing new human resources and payroll systems; (3) Plans, organizes and directs high-priority projects or initiatives which cross-cut HRS business lines; and (4) Represents the Department on Interagency Groups.

Establish the *Office of Legacy Systems Oversight (PBW)* and enter the functional statement as follows:

Office of Legacy Systems Oversight (PBW)

(1) Provides overall program leadership and direction to the operation of the current legacy personnel and payroll system; (2) Conducts analysis and design of systems changes, enhancements and new requirements; (3) Provides the full range of automated data processing support activities associated with the development and maintenance of the civilian personnel/payroll processing and reporting systems; (4) Provides automation services for the HHS automated personnel and payroll systems and subsystems; (5) Manages the operation of production for the civilian personnel and payroll processing systems; and (6) Provides human resource and human resource systems customer liaison services to resolve issues and improve customer services.

Under the heading *Personnel and Pay Systems Division (PBG)* rename the *Personnel and Pay Systems Division (PBG)* the *Division of Payroll (PBG)*; delete "and the Social Security Administration's" under item (1); delete

item (2) in its entirety and renumber the remaining items in sequence.

Dated: September 21, 2000.

Lynnda M. Regan,

Director, Program Support Center.

[FR Doc. 00-25285 Filed 10-2-00; 8:45 am]

BILLING CODE 4168-17-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Privacy Act of 1974; New System of Records

AGENCY: Workplace Violence Prevention Team, Office of Human Resources, Office of the Assistant Secretary for Management and Budget, Office of the Secretary, HHS.

ACTION: Notification of a new system of records.

SUMMARY: In accordance with the requirements of the Privacy Act, HHS is giving notice that it is publishing a notice of a new system of records, 09-90-1200, "Workplace Violence Prevention Team Records." We are also proposing routine uses for this new system.

DATES: OHR invites interested parties to submit comments on the proposed internal and routine uses on or before November 13, 2000. OHR sent a Report of a New System to the Congress and to the Office of Management and Budget (OMB) on September 20, 2000. The new system of records will be effective 40 days from the date submitted to OMB unless OHR receives comments that would result in a contrary determination.

ADDRESSES: Address comments to the Privacy Act Officer, Office of the Secretary, 200 Independence Avenue, SW, Room 645F, Washington, DC 20201. Comments received will be made available for public inspection at the above address during normal business hours, 8:30 a.m.-5 p.m.

FOR FURTHER INFORMATION CONTACT: Workplace Violence Prevention Team Leader, Work and Family Program, 330 C Street, SW, Room 1250, Washington, DC 20201. Telephone number is 202-690-1441 or 202-690-8229. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: The Office of Human Resources (OHR) proposes to establish a new system of records: 09-90-1200, "Workplace Violence Prevention Team Records." This system of records will be used by members of the HHS Workplace Violence Prevention Teams (WVPT) to assist

employees who contact them for assistance with an actual or potential workplace violence situation. The records of the system will be used to: (1) Administer health programs related to workplace violence prevention activities; (2) administer and support safety programs that help reduce accidents and injuries among employees; (3) monitor or follow up on violent or potentially violent situations in HHS; (4) help WVPT members make assessments of violent or potentially violent situations and then make recommendations regarding interventions to those persons involved with the situations; (5) prepare administrative reports, conduct evaluations, or audit the activities of the team; and (6) inform management, medical personnel and security staff in HHS of potential and actual dangerous situations that require their actions to assure the safety and health of employees.

The system will contain records on each person who contacts the teams for assistance. It will also contain records on individuals who are being interviewed and investigated by the teams. The records will typically contain demographic data such as the individual's name, pay plan, grade level, employing organization, office location, duty hours, telephone number and name of supervisor. Information will also be maintained about the workplace violence situations concerning those who contact the teams. This will include descriptions of events related to the workplace violence situations, others involved, as well as dates and locations of events. Each record will also contain an assessment of the situation by the WVPT, information regarding any interviews that were conducted, and the recommended interventions. If an individual is being interviewed because of another person's report, the record may also contain information that was obtained through interviews with the supervisor, Federal or local law enforcement personnel, HHS security staff, co-workers, and any others involved in the situation.

AUTHORITIES FOR MAINTENANCE OF THE SYSTEM:

- 5 U.S.C. 7901 (Health Services Programs);
- 5 U.S.C. 7902 (Safety Programs).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The routine uses proposed for this system are compatible with the stated purposes of the system, i.e., administer

health programs related to workplace violence; administer and support safety programs that help reduce accidents and injuries; monitor or follow up on violent or potentially violent situations in HHS; make assessments of violent or potentially violent situations and recommendations regarding interventions; prepare administrative reports, evaluations and audit activities; and inform management, medical personnel and security staff in HHS of potential or actual dangerous situations that require action to assure the safety and health of employees.

The WVPT will disclose relevant information to third parties outside the Department as follows: Routine Use 1: To a congressional office when it has received a written inquiry from an individual about whom a record is maintained in this system. This request will be verified before disclosure from the individual's record will be made to the congressional office. Routine Use 2: When a person or property is harmed, or when threats of harm to a person or property are reported, disclosure will be made, as appropriate, to law enforcement authorities, medical treatment authorities, and those persons being threatened or harmed. Routine Use 3: To the Department of Justice, a court or other tribunal, when: (a) HHS, or any component, thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case HHS determines that such disclosure is compatible with the purpose for which the records are collected. The local System Manager will approve any disclosure made under this routine use. Routine Use 4: To student volunteers, interns, individuals working under a personal services contract, organizations working under contract, and other individuals performing functions for the Department but technically not having the status of agency employees, if they need access to the records to perform their assigned duties. This includes those performing threat or risk

assessments. The contractor will be required to maintain Privacy Act safeguards with respect to such records. These safeguards are explained in the section entitled "Safeguards." Routine Use 5: To qualified personnel for research, audit, or evaluation purposes.

SAFEGUARDS:

The OHR has instituted extensive safeguards to protect both the automated and non-automated records. The Systems Security Officer has certified that the safeguards for the system are commensurate with the sensitivity and criticality of the records. The system notice describes: (1) The safeguards that are in effect to ensure that only authorized users have access to the records; (2) the physical security measures used to protect the records; (3) the procedural safeguards to ensure data integrity and prevent unauthorized access and disclosure; and (4) security guidelines for contractors, as applicable.

The system notice is written in the present rather than future tense to avoid the unnecessary expenditure of public funds to republish the notice after the new system becomes effective.

Dated: September 27, 2000.

Evelyn White,

Deputy Assistant Secretary for Human Resources, ASMB.

09-90-1200

SYSTEM NAME:

Workplace Violence Prevention Team (WVPT) Records, HSS/OS/ASMB/OHR.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Records are located throughout HHS in offices designated to provide workplace violence prevention services. Since there are numerous sites around the country available for these services, contact the appropriate system manager in Appendix A for more details about specific locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system include: persons who report potential or actual workplace violence; persons accused of threatening to commit, or committing workplace violence; and persons interviewed or investigated in connection with reports or allegations of potential or actual workplace violence.

CATEGORIES OR RECORDS IN THE SYSTEM:

This system contains written and electronic records on each person who contacts the WVPT for assistance. It also contains records on individuals who are

being interviewed and investigated by the WVPT. The records typically contain demographic data such as the individual's name, pay plan, grade level, employing organization, office location, duty hours, telephone number, and name of supervisor.

Information is also maintained about the workplace violence situation that is concerning the person who contacts the WVPT. This includes descriptions of events related to the workplace violence situation, others involved, as well as dates and locations of events. Each record will also contain an assessment of the situation by the WVPT, information regarding any interviews that were conducted, and the recommended interventions.

If the WVPT is interviewing a person because of someone else's report, the record of the person being interviewed may also contain information that was obtained through interviews with the supervisor, Federal or local law enforcement personnel, HHS security staff, co-workers, and any others involved in the situation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

- 5 U.S.C. 7901 (Health Services Programs);
- 5 U.S.C. 7902 (Safety Programs)

PURPOSE(S): THE AGENCY MAINTAINS THIS SYSTEM OF RECORDS TO:

1. Administer health programs related to workplace violence prevention activities;
2. Administer and support safety programs that help reduce accidents and injuries among employees;
3. Monitor or follow up on violent or potentially violent situations in HHS;
4. Help WVPT members make assessments of violent or potentially violent situations and then make recommendations regarding interventions to those persons involved with the situations;
5. Prepare administrative reports, conduct evaluations, or audit the activities of the teams; and
6. Inform management, medical personnel and security staff in HHS of potential and actual dangerous situations that require action to assure the safety and health of employees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records or information from these records may be released:

1. To a congressional office when it has received a written inquiry from an individual about whom a record is maintained in this system. This request will be verified before disclosure from

the individual's record will be made to the congressional office.

2. When a person or property is harmed, or when threats of harm to a person or property are reported, disclosure will be made, as appropriate, to law enforcement authorities, medical treatment authorities, and those persons being threatened or harmed.

3. To the Department of Justice, a court or other tribunal, when: (a) HHS, or any component, thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case HHS determines that such disclosure is compatible with the purpose for which the records are collected. The local System Manager will approve any disclosure made under this routine use.

4. To student volunteers, interns, individuals working under a personal services contract, organizations working under contract, and other individuals performing functions for the Department but technically not having the status of agency employees, if they need access to the records to perform their assigned duties. This includes those performing threat or risk assessments. Contractors will be required to maintain Privacy Act safeguards with respect to such records. These safeguards are explained in the section entitled "Safeguards."

5. To qualified personnel for research, audit, or evaluation purposes.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders and on password-protected computers, and computer disks. Folders and computer disks, when not in use, are stored in a secured area accessible only to members of the WVPT.

RETRIEVABILITY:

These records are retrieved by employee name (those who reported a violent or potentially violent event and those who were reported), event date, and event location.

SAFEGUARDS:

1. *Authorized Users:* Access to these records is limited to members of the WVPT. Others working with the WVPT, such as outside consultants, when approved by the team, may have access for the purpose of investigating a situation, preparing reports, or conducting evaluations and audits.

2. *Physical Safeguards:* All paper records are stored in metal filing cabinets equipped with locks, preferably combination. The file cabinets are stored in secure areas with access limited to the WVPT members. Computer records are stored on disks or computers that are password protected or are systems discreet from other computer systems. Disks are stored in the same manner as paper records.

3. *Procedural Safeguards:* Information will only be released from this system of records in accordance with the routine uses described above or as provided by the Privacy Act's disclosure provisions. Those who are serviced by the WVPT will be informed in writing about the WVPT's confidentiality procedures when they begin the process. Consultants must not disclose records. Secondary disclosure of information is prohibited unless permitted by a routine use or other of the Privacy Act's disclosure provisions.

4. *Contractor Guidelines:* Contractors who are given records under routine use #3 must maintain the records in a secured area, allow only those individuals immediately involved in the processing of the records to have access to them, prevent unauthorized persons from gaining access to the records, and return records to the System Managers immediately upon completion of the work specified in their contracts. Contractor compliance is assured through inclusion of Privacy Act requirements in contract clauses, and through monitoring by contract and project officers. Contractors who maintain records are instructed to make no disclosure of the records except as authorized by the System Managers and as stated in the contracts.

RETENTION AND DISPOSAL:

Records are destroyed two years after the incident/situation has been closed by the WVPT or until any litigation/third party action about it has been resolved. Files will be destroyed only by a WVPT team member and with a witness present. Paper records will be destroyed by shredding or burning. Information stored on computers will be destroyed by deleting all appropriate portions of floppy disks, hard drives, tapes, and other electronic media that may contain the record. Consultant and

contractor records will be transferred to the local WVPT for destruction.

SYSTEM MANAGER(S) AND ADDRESS:

The records of individuals served by the WVPT are managed by local System Managers in the various HHS sites listed in Appendix A.

NOTIFICATION PROCEDURES:

For purposes of notification, the subject individual, and/or the individual's legal representative should write to the local System Manager who will require the system name, requestor name, address, and Social Security Number to ascertain whether the individual's record is in the system.

RECORD ACCESS PROCEDURES:

For purposes of access, use the same procedures outlined in Notification Procedures above. Requestors must also reasonably specify the record contents being sought. (These procedures are in accordance with Department regulation 45 CFR 5b.5(a)(2).)

CONTESTING RECORD PROCEDURES:

The subject individual shall contact the System Manager and reasonably identify the record and specify the information being contested. State the corrective action sought (addition to, deletion of, or substitution of) and the reasons for the correction with supporting justification. (These procedures are in accordance with Department regulation 45 CFR 5b.7.)

RECORD SOURCE CATEGORIES:

Information in this system of records is supplied by the individual contacting the WVPT, this individual's coworkers (including the supervisor), a member of the individual's family, sources to/from whom the individual has been referred for assistance, Departmental officials involved in the situation (such as security staff), or other sources involved with the situation and its resolution.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE PRIVACY ACT:

None.

Appendix A

1. For employees in the Southwest DC area, contact: Workplace Violence Prevention Team Leader, PSC Work/Life Center, 330 C Street, SW, Room 1250, Washington, DC 20201.

2. For employees on the MIH Campus in Bethesda, MD, contact: Critical Incidents Violence Intervention League (CIVIL) Team Leader, OHRM/OD, 31 Center Drive, Room 1C39, Bethesda, MD 20892.

3. For employees at HCFA headquarters in Baltimore, MD, contact:

Crisis Management Team Leader, 7500 Security Boulevard, Room S1-23-27, Baltimore, MD 21244.

4. For employees at CDC headquarters in Atlanta, GA, contact: Crisis Management Team Chair, Associate Director for Management and Operations, 1600 Clifton Road, NE, MS-D15, Atlanta, GA 30333, or, Crisis Management Team Co-Chair, Employee Relations Specialist, 4770 Buford Highway, MS-K17, Atlanta, GA 30341-3274.

5. For employees in SAMHSA, contact: SAMHSA Crisis Intervention Team Leader, SAMHSA, Division of Human Resources Management, 5600 Fishers Lane, Room 14C17, Rockville, Maryland 20857, 301-443-4006.

[FR Doc. 00-25293 Filed 10-2-00; 8:45 am]

BILLING CODE 4150-04-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request the Office of Management and Budget (OMB) to allow a proposed information collection project: "Medical Expenditure Panel Survey Household Component (MEPS-HC)—2001 through 2004". In accordance with the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)), AHRQ invites the public to comment on this proposed information collection.

DATES: Comments on this notice must be received by December 4, 2000.

ADDRESSES: Written comments should be submitted to: Cynthia McMichael, Reports Clearance Officer, AHRQ, 2101 East Jefferson Street, Suite 500, Rockville, MD 20852-4908.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of the proposed information collection. All comments will become a matter of public record.

In accordance with the above-cited legislation, comments on the AHRQ information collection proposal are requested with regard to any of the following: (a) Whether the proposed

collection of information is necessary for the proper performance of functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden (including hours and costs) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

SUPPLEMENTARY INFORMATION:

Proposed Project

"Medical Expenditure Panel Survey Household Component (MEPS-HC)—2001 through 2004".

The AHRQ intends to conduct an annual panel survey of U.S. households to collect information on a variety of measures related to health status, health insurance coverage, health care use and expenditures, and sources of payment for health services. Each panel consists of a nationally representative sample of U.S. households who remain in MEPS for two consecutive years of data collection. The first panel of MEPS began in 1996 and has continued annually thereafter. The MEPS-HC is jointly sponsored by the AHRQ and the National Center for Health Statistics (NCHS).

It will be conducted using a sample of households selected from households which responded to the National Health Interview Survey (NHIS) sponsored by NCHS. The NHIS is a household survey which collects health related data from approximately 50,000 households and 110,000 people. The NHIS is used as the sampling frame for the MEPS and several other surveys as part of efforts by the Department of Health and Human Services (HHS) to integrate survey data collection activities.

Data to be collected from each household include detailed information on demographics, health conditions, current health status, utilization of health care providers, charges and payments for health care services, quality of care received, medications, employment and health insurance.

Subject to AHRQ and NCHS confidentiality statutes, data will be made available through publications, articles in major journals as well as public use data files. The data are intended to be used for purposes such as:

- Generating national estimates of individual and family health care use and expenditures, private and public health insurance coverage, and the

availability, costs and scope of private health insurance benefits among Americans;

- Examining the effects of changes in how chronic care and disability are managed and financed;
- Evaluating the growing impact of managed care and of enrollment in different types of managed care plans; and
- Examining access to and costs of health care for common diseases and conditions, health care quality, prescription drug use, and other health issues.

Statisticians and researchers will use these data to make important

generalizations on the civilian non-institutionalized population of the United States, as well as to conduct research in which the family is the unit of analysis.

Method of Collection

The data will be collected using a combination of modes. For example, the AHRQ intends to introduce study participants to the survey through advance mailings. The first contact will provide the household with information regarding the importance and uses of the information obtained. The AHRQ will then conduct five (in-person)

interviews with each household to obtain health care use and expense data. Data will be collected using a computer-assisted personal interviewing method (CAPI). In certain cases, AHRQ will conduct interviews over the telephone, if necessary. Burden estimates follow:

Estimated Annual Respondent Burden Per Year

Each MEPS participant is asked to complete 5 interviews over two and one half years. Each interview averages 1.8 hours in length. Total burden is estimated in the following chart.

Survey period	Number of completes	Burden per complete (hours)	Total burden (hours)
Feb–July 2001	19,380	1.8	34,884
August–Dec 2001	13,280	1.8	23,904
Feb–July 2002	21,248	1.8	34,246
Aug–Dec 2002	16,239	1.8	29,230
Feb–July 2003	24,187	1.8	43,537
			148,291

Dated: September 27, 2000.

John M. Eisenberg,

Director.

[FR Doc. 00–25339 Filed 10–2–00; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–00–52]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) is providing an opportunity for public comment on proposed data collection projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Assistant Reports Clearance Officer at 404–639–7090.

Comments are invited on: (i) Whether the proposed collection of information is necessary for the proper performance of the functions of the CDC, including whether the information shall have a practical utility; (ii) the accuracy of the agency's estimate of the burden of the

proposed collection of information; (iii) ways to enhance the quality, utility, and clarity of the information to be collected; and (iv) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, Georgia 30333. Written comments should be received within 60 days of this notice.

Proposed Project

Survey to Determine the National Capacity to Provide Colorectal Cancer Screening and Follow-up Examinations—New—The National Center for Chronic Disease Prevention and Health Promotion, Division of Cancer Prevention and Control, proposes to conduct a study to provide a national assessment of the current capacity to conduct colorectal cancer (CRC) screening and follow-up examinations for average risk persons aged 50 and older. Colorectal cancer is the second leading cause of cancer-related deaths in the United States. While there is strong scientific evidence that screening for CRC reduces incidence and mortality from this disease, rates of use of screening tests are currently low. Efforts to promote widespread screening for CRC are intensifying among local, state, and

federal health agencies and professional organizations nationwide. However, limited information is available regarding the number of health care personnel currently trained and available to perform screening and follow-up examinations.

The proposed study will be conducted through the implementation of a survey which will be mailed to a random sample of 1,800 providers known to possess flexible sigmoidoscopes and colonoscopes, based upon lists provided by major endoscopic equipment manufacturers. The sampling frame will be designed to include providers from all regions of the country and all physician specialists who may be screening for CRC. The survey will provide information on the types of health care providers who are performing CRC screening and follow-up examinations, the equipment currently being used for screening and follow-up examinations, and current reimbursement rates for these tests. The results of the analysis will be used to (1) identify deficits in the medical infrastructure, (2) guide the development of training initiatives and educational programs for health care providers, and (3) provide critical baseline information for local, state and federal policy makers for the planning of national initiatives to increase colorectal cancer screening. There is no cost to respondents.

Respondents	Number of respondents	Number of responses/respondent	Average burden of response (in hrs.)	Total burden (in hrs.)
Health Care Providers	1800	1 D20/60	600	600
Office Managers	1800	1	20/60	
Totals				1200

Dated: September 27, 2000.

Nancy Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00-25321 Filed 10-2-00; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Availability of Government-Owned Trademark for Licensing

AGENCY: National Institute of Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (DHHS).

TITLE: Availability of a Government-owned Trademark for Licensing: The Registry of Toxic Effects of Chemical Substances (RTECS®).

ACTION: Notice and request for proposals. NIOSH is requesting proposals for the purpose of establishing a licensing agreement for the continuation of a trademarked product: RTECS®. (The NIOSH Trademark named in this notice is owned by the United States Government and is available or licensing in the United States (U.S.), in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development.)

SUMMARY: From the 1971 initial release of the mandated *Toxic Substances List*, the National Institute for Occupational Safety and Health (NIOSH) has been systematically building and updating the Registry of Toxic Effects of Chemical Substances (RTECS®). RTECS® was originally published in book format, later a microfiche version was developed. Currently, RTECS® is available in a digital format for electronic delivery. RTECS® is recognized as the world's most extensive collection of numerical toxicological data. Because RTECS® identifies specific toxicological endpoints, it has a unique status among databases that provide toxicology

information. RTECS® is used not only by the occupational safety and health community; it serves as a standard reference for life-science scientists and regulatory groups from all parts of the world. Both its content and design have contributed to its wild spread use, thus making RTECS® a commercially viable product. NIOSH is now soliciting proposals from organizations interested in assuming the responsibility for the continued operation and funding of RTECS®. This include the ongoing review of toxicological documents, extraction and updating of appropriate information as well as the marketing and distribution of the RTECS® database through a trademark licensing agreement.

DATES: Written licensing proposals can be sent to Thomas E. O'Toole, M.P.H., Deputy Director, Technology Transfer Office, Centers for Disease Control and Prevention (CDC), Mailstop E-67, 1600 Clifton Road, Atlanta, Georgia 30333 on or before December 4, 2000.

FOR FURTHER INFORMATION CONTACT: Doris Sweet, Education and Information Division, Information Resources Branch, NIOSH, CDC 4676 Columbia Parkway, Mailstop C-18, Cincinnati, Ohio 45226, telephone 513-533-8359, e-mail address: dvs1@cdc.gov.

SUPPLEMENTARY INFORMATION:

RTECS® Trademark License Proposal

1. Exclusive use of the RTECS® name for the production and marketing of the database. The Licensee will have unlimited right to the use of the RTECS® name for product identification and promotion as related to selling and marketing the production of the Database.

2. Control of the current RTECS® Master File. The Licensee will provided with a copy of the last NIOSH-produced RTECS® Master File and the CODEN File. The Licensee may reformat the data, provided the six toxicity fields remain intact. New fields may be added for the enhancement of the Database (e.g. physical and chemical properties, structural formulas, author names). Selected fields may be deleted if the worth or power of the Database is not diminished (e.g., Wiswesser Line Notation).

3. Authority and responsibility for vendor agreements. Upon execution of this agreement, the National Technical Information Service (NTIS), currently serving as broker for NIOSH, will notify all current vendors that existing vendor agreements will terminate after ninety (90) days. Thereafter, vendor agreements become the responsibility of the Licensee, who may decide to extend existing agreements until the expiration date, or to negotiate new agreements with all vendors. The Licensee will not be bound by any previous agreements with NTIS, unless they chose to negotiate with that organization.

4. Access to comprehensive documentation. NIOSH will provide access to the collection of all source references cited in RTECS®. These are an essential tool in accessing the original documentation cited in the Database. In order to assure full historical information, NIOSH will also provide access to a complete collection of printed editions of RTECS®, from 1971 to 1985-86, and annual microfiche editions beyond 1987.

5. NIOSH consultation services. NIOSH will provide support to the Licensee through participation on any established Board/Committee empowered to modify the Database.

NIOSH Requirements To Be Addressed in the Proposal

1. Maintenance of RTECS® as a viable toxicological database. The Licensee must maintain the quality of the Database, making only such changes that will enhance its value and power, and those mandated by changing technologies. The adoption of alternate test methods will require an altered approach. The proposal should address plans for coverage of current toxicological literature on an international scale.

2. Preservation of international literature coverage. The proposal shall address the manner in which the continued coverage of international literature will be accomplished. Because much of the current data now originates from outside the United States, especially in the Orient and Eastern Europe, access to linguistic skills is vital.

3. Continued accessibility of RTECS® to the international scientific community. The Licensee must make RTECS® continuously available world-wide and market the Database in a variety of formats including, but not limited to on-line, CD-ROM, and the Internet.

4. Multiple point and free access to NIOSH of all RTECS® products. The Licensee will provide NIOSH research and information staff with multiple point and free access to RTECS® to accommodate NIOSH users at six NIOSH sites, maximum usage not to exceed 25 users.

5. NIOSH representation on editorial or policy board or committee. A NIOSH representative will be designated to serve on any editorial or policy board established for the Database to ensure that the interests of the Institute are considered. This representative will serve in a consultative capacity without decision-making authority.

General Terms

1. Ownership of the RTECS® trademark will be retained by NIOSH.

2. The licensing agreement can be terminated by either party.

3. Ownership of data files, microfiche, and other files. NIOSH will retain ownership of the last RTECS® Master File produced with NIOSH funds. The Licensee will retain ownership of all new data generated and indexed under this agreement. NIOSH will also retain ownership of the microfiche collection of the bibliographical references. The full hard copy collection of the same references will be delivered to the Licensee, along with the annual microfiche editions produced after 1987. In the event of a termination of the Licensing Agreement, the hard copy collection and annual microfiche additions will be returned to NIOSH.

4. Duration of agreement will be negotiated in the license.

5. In submitted proposals, each requirement shall be addressed individually.

Linda Rosenstock,

Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention.

[FR Doc. 00-25429 Filed 10-02-00; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Council for the Elimination of Tuberculosis: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92-463), the Centers for Disease Control and Prevention (CDC) announces the following council meeting.

Name: Advisory Council for the Elimination of Tuberculosis (ACET).

Times and Dates: 8:30 a.m.-5 p.m., October 18, 2000; 8:30 a.m.-12 p.m., October 19, 2000.

Place: Corporate Square, Building 8, 1st Floor Conference Room, Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 100 people.

Purpose: This council advises and makes recommendations to the Secretary of Health and Human Services, the Assistant Secretary for Health, and the Director, CDC, regarding the elimination of tuberculosis. Specifically, the Council makes recommendations regarding policies, strategies, objectives, and priorities; addresses the development and application of new technologies; and reviews the extent to which progress has been made toward eliminating tuberculosis.

Matters To Be Discussed: Agenda items include issues pertaining to the IOM Report on TB Elimination in the U.S. and other TB related topics.

Contact Person for More Information: Paulette Ford, National Center for HIV, STD, and TB Prevention, 1600 Clifton Road, NE, M/S E-07, Atlanta, Georgia 30333, telephone 404/639-8008.

The Director, Management Analysis and Services Office, has been delegated the authority to sign Federal Register Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: September 27, 2000.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 00-25322 Filed 10-2-00; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N-1224]

Agency Information Collection Activities; Announcement of OMB Approval; Submitting and Reviewing Complete Responses to Clinical Holds; Guidance for Industry

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Submitting and Reviewing Complete Responses to Clinical Holds; Guidance for Industry" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Information Resources Management (HFA-250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-1482.

SUPPLEMENTARY INFORMATION: In the *Federal Register* of April, 13, 2000 (65 FR 19910), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910-0445. The approval expires on September 12, 2003. A copy of the supporting statement for this information collection is available on the Internet at <http://www.fda.gov/ohrms/dockets>.

Dated: September 26, 2000.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 00-25283 Filed 10-2-00; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Cardiovascular and Renal Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed.

Name of Committee: Cardiovascular and Renal Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on October 19, 2000, from 9 a.m. to 5 p.m., and on October 20, 2000, from 8:30 a.m. to 4 p.m.

Location: National Institutes of Health, 9000 Rockville Pike, Bldg. 10, Clinical Center, Jack Masur Auditorium, Bethesda, MD.

Contact Person: Joan C. Standaert, Center for Drug Evaluation and Research (HFD-110), Food and Drug Administration, Woodmont II Bldg., 1451 Rockville Pike, Rockville, MD 20752, 419-259-6211, or John M. Treacy, 301-827-7001, or FDA Advisory Committee Information Line, 1-800-741-8138 (301-443-0572 in the Washington, DC area), code 12533. Please call the Information Line for up-to-date information on this meeting.

Agenda: On October 19, 2000, the committee will meet in closed session. On October 20, 2000, the committee will discuss dose response using data from approved antihypertensive drugs.

Procedure: On October 20, 2000, from 8:30 a.m. to 4 p.m., the meeting will be open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by October 12, 2000. Oral presentations from the public will be scheduled between approximately 8:30 a.m. to 9:30 a.m. on October 20, 2000. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before October 12, 2000, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On October 19, 2000, from 9 a.m. to 5 p.m., the meeting will be closed to permit discussion and review of trade secret and/or confidential information regarding pending investigational new drug applications and new drug applications (5 U.S.C. 552b(c)(4)).

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: September 22, 2000.

Bernard A. Schwetz,

Acting Deputy Commissioner.

[FR Doc. 00-25284 Filed 10-2-00; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00D-1492]

Mutual Recognition Agreement, Medical Device Annex; Confidence Building Activities: Availability of Draft Guidances

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of two draft guidance documents entitled "Implementation Plan for the Mutual Recognition Agreement Between the European Union and the United States of America: Confidence Building Programme: Overview" and "Implementation Plan for the Mutual Recognition Agreement Between the European Union and the United States of America: Procedures for Joint Confidence Building." These draft guidance documents have been prepared jointly by FDA and the Commission for the European Communities (CEC's) and are intended to serve as guidance for all interested parties participating in confidence building activities under the medical device annex to the Mutual Recognition Agreement (MRA). While these draft guidance documents reflect the latest European Union (EU) edits, they have not been accepted by FDA. FDA is requesting comments on these documents. FDA plans to provide its comments on these documents and any stakeholder comments the agency receives to the CEC's.

DATES: Submit written comments on these draft guidance documents to ensure their adequate consideration in preparation of the final document by November 2, 2000.

ADDRESSES: Submit written comments concerning these draft guidance documents to the Dockets Management Branch (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments should be identified with the docket number found in brackets in the heading of this document. To expedite the review process, if possible, FDA requests that you send a copy of your comments to the contact person, Christine Nelson (address below) or by e-mail to mcn@cdrh.fda.gov. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to these documents. If you do not have access to the Internet, submit written

requests for single copies on a 3.5" diskette of the draft guidance documents listed above to the Division of Small Manufacturers Assistance (HFZ-220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your requests, or fax your request to 301-443-8818.

FOR FURTHER INFORMATION CONTACT: Christine Nelson, Office of Health and Industry Programs (HFZ-220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301-443-6597, ext. 128, FAX 301-443-8818, or e-mail mcn@cdrh.fda.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On June 27, 1997, the United States and the EU signed an MRA that covers a variety of product sectors including telecommunication, electrical safety, recreational crafts, pharmaceuticals, and medical devices. The Medical Device Annex to the MRA became effective December 7, 1998, and initiated a 3-year transition period during which both sides will engage in confidence building activities. Article 7 of the Medical Device Annex provides that FDA and the CEC's will establish a joint confidence building program to provide sufficient evidence of the capabilities of the nominated Conformity Assessment Bodies (CAB's) to perform quality system or product evaluations to the specifications of the parties. After the 3-year period, the Medical Device Annex would become operational if the confidence building activities are successfully completed.

The Medical Devices Annex covers the exchange of quality systems evaluation/inspection reports for all medical devices and premarket evaluations for selected low to medium risk devices. A European CAB can conduct inspections for all classes of devices and 510(k) evaluations for selected devices based on FDA requirements for European device manufacturers who wish to market their devices in the United States. Similarly, a U.S. CAB can conduct quality system or type-testing evaluations based on EU requirements for U.S. device manufacturers who wish to market their devices in the EU. In addition, an alert system would be set up during the transition period and maintained thereafter, by which the parties will notify each other when there is an immediate danger to public health. As part of that system, each party will

notify the other party of any confirmed problem reports, corrective actions, or recalls.

These two draft guidance documents entitled "Implementation Plan for the Mutual Recognition Agreement Between the European Union and the United States of America: Confidence Building Programme: Overview" and "Implementation Plan for the Mutual Recognition Agreement Between the European Union and the United States of America: Procedures for Joint Confidence Building" provide guidance on how to implement confidence building activities under the Medical Device Annex of the MRA for quality system evaluations and product evaluations. Guidance on implementing an alert system will be issued separately at another time.

II. Significance of Guidance

These draft guidance documents are intended to provide guidance. The draft guidance documents were developed by FDA and the European Commission (EC) to further implementation of the MRA. This current draft represents the EC's latest edits. FDA will be providing comments to the EC and proposing certain changes that are described in the "FDA Concerns" section of the guidance document. These draft guidance documents do not create or confer any rights for or on any person and do not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

The agency has adopted good guidance practices (GGP's) which set forth the agency's policies and procedures for the development, issuance, and use of guidance documents (62 FR 8961, February 27, 1997). These guidance documents are issued as a draft Level 1 guidance consistent with GGP's.

III. Electronic Access

Persons interested in obtaining copies of these draft guidance documents may do so through the Internet at www.fda.gov/cdrh/mra.

IV. Comments

Interested persons may submit to the Dockets Management Branch (address above) written comments regarding these draft guidance documents by November 2, 2000. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments should be identified with the

docket number found in brackets in the heading of this document. A copy of the draft guidance documents and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. To expedite receipt and review, FDA requests, if possible, that a copy of your comments be sent to the contact person (address above) or by e-mail to mcn@cdhr.fda.gov.

Dated: September 22, 2000.

William K. Hubbard,

Senior Associate, Commissioner for Policy, Planning, and Legislation.

[FR Doc. 00-25351 Filed 10-2-00; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4563-N-16]

Notice of Proposed Information Collection for Public Comment; Contract and Subcontract Activity

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* December 4, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control number and should be sent to: Mildred M. Hamman, Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4238, Washington, DC 20410-5000.

FOR FURTHER INFORMATION CONTACT: Mildred M. Hamman, (202) 708-3642, extension 4128, for copies of the proposed forms and other available documents. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork

Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Contract and Subcontract Activity.

OMB Control Number: 2577-0088.

Description of the need for the information and proposed use: The information provided to HUD by Housing Agencies/Grantees will be used to prepare an annual report on Minority Business Enterprise (MBE) participation in Public and Indian Housing Programs. The report will be submitted to the Department of Commerce pursuant to Executive Order 12432. HUD will also use the information to monitor and evaluate Housing Agency performance. HUD plans to collect this information electronically over the Internet.

Agency form number: HUD-2516.

Members of affected public: State, Local or Tribal Government, Small Businesses or Organizations.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: 3,400 respondents annually, one hour per response, 3,400 total burden hours.

Status of the proposed information collection: Extension, without change.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: September 27, 2000.

Milan Ozdinec,

General Deputy Assistant, Secretary for Public and Indian Housing.

BILLING CODE 4210-33-M

<p>This report is to be completed by grantees, developers, sponsors, builders, agencies, and/or project owners for reporting contract and subcontract activities of \$10,000 or more under the following programs: Community Development Block Grants (entirety) and small (title); Urban Development Action Grants (Housing Development Grants; Multifamily Insured and Noninsured; Public and Indian Housing Authorities; and contracts entered into by recipients of CDBG rehabilitation assistance.</p> <p>Contract/subcontract activities of less than \$10,000 need be reported only if such contracts represent a significant portion of your total contracting activity. Include only contracts executed during this reporting period.</p> <p>This form has been modified to capture Section 3 contract data in columns 7g and 7i. Section 3 requires that the employment and other economic opportunities generated by HUD financial assistance for housing and community development programs shall, to the greatest extent feasible, be directed toward low- and very low-income persons, particularly those who are recipients of government assistance for housing. Recipients using this form to report Section 3 contract data must also use Part I of form HUD-60502 to report employment and training opportunities data. Form HUD-2516 is to be completed.</p> <p>Community Development Programs</p> <ol style="list-style-type: none"> 1. Grantee: Enter the name of the unit of government submitting this report. 2. Contact Person: Enter name and phone of person responsible for maintaining and submitting contract/subcontract data. 7a. Grant Number: Enter the HUD Community Development Block Grant Identification Number (with dashes). For example: D-32-MC-22-0034. For Entitlement Programs and Small City multi-year comprehensive programs, enter the latest approved grant number. 7b. Amount of Contract/Subcontract: Enter the dollar amount rounded to the nearest dollar. If subcontractor ID number is provided in 7i, the dollar figure would be for the subcontract only and not for the prime contract. 7c. Type of Trade: Enter the numeric codes which best indicate the contractor's subcontractor's service. If subcontractor ID number is provided in 7i, the type of trade code would be for the subcontractor only and not for the prime contractor. The "other" category includes supply, professional services and all other activities except construction and education/training activities. 7d. Business Racial/Ethnic/Gender Code: Enter the numeric code which indicates the racial/ethnic gender character of the contract(s) and contract(s) of 51% of the business. When 51% or more is not owned and controlled by any single racial/ethnic gender category, enter the code which seems most appropriate. If the subcontractor ID number is provided, the code would apply to the subcontractor and not to the prime contractor. 7e. Women Owned Business: Enter Yes or No. 7f. Contractor Identification (ID) Number: Enter the Employer (PIS) Number of the Prime Contractor as the unique identifier for prime recipient of HUD funds. Note that the Employer (PIS) Number must be provided for each contract/subcontract awarded. 7g. Section 3 Contractor: Enter Yes or No. 7h. Subcontractor Identification (ID) Number: Enter the Employer (PIS) Number of the subcontractor as the unique identifier for each subcontract awarded from HUD funds. When the subcontractor ID Number is provided, the respective Prime Contractor ID Number must also be provided. 7i. Section 3 Contractor: Enter Yes or No. 7j. Contractor/Subcontractor Name and Address: Enter this information for each firm receiving contract/subcontract activity only one time on each report for each firm. Previous editions are obsolete. 	<p>income calling higher or lower than 80 percent of the median for the area on the basis of the Secretary's findings that such variations are necessary because of prevailing levels of construction costs or unusually high or low income levels. Very low-income persons or families (including single persons) whose incomes do not exceed 50 percent of the median family income for the area, as determined by the Secretary with adjustments for smaller and larger families, except that the Secretary may establish income callings higher or lower than 50 percent of the median for the area on the basis of the Secretary's findings that such variations are necessary because of unusually high or low family incomes.</p> <p>Submit two (2) copies of this report to your local HUD Office within ten (10) days after the end of the reporting period you checked in item 4 on the front.</p> <p>Complete item 7i, only once for each contract/subcontract on each semi-annual report.</p> <p>Enter the prime contractor's ID in item 7i for all contracts and subcontracts. Include only contracts executed during this reporting period. Prime/PMs are to report all contract/subcontracts.</p> <p>Public Housing and Indian Housing Programs</p> <p>Prime/PMs are to report all contract/subcontracts. Include only contracts executed during this reporting period.</p> <ol style="list-style-type: none"> 1. Project Owner: Enter the name of the unit of government, agency or mortgagee entity submitting this report. Check box as appropriate. 2. Contact Person: Same as item 3 under CDP Programs. 3. Reporting Period: Check only one period. 4. Program Code: Enter the appropriate program code. 5. Grant/Project Number: Enter the HUD Project Number or Housing Development Grant or number assigned. 7a. Amount of Contract/Subcontract: Same as item 7b under CDP Programs. 7b. Type of Trade: Same as item 7c under CDP Programs. 7c. Business Racial/Ethnic/Gender Code: Same as item 7d under CDP Programs. 7d. Contractor Identification (ID) Number: Same as item 7i under CDP Programs. 7e. Women Owned Business: Enter Yes or No. 7f. Contractor Identification (ID) Number: Same as item 7i under CDP Programs. 7g. Section 3 Contractor: Enter Yes or No. 7h. Subcontractor Identification (ID) Number: Same as item 7i under CDP Programs. 7i. Section 3 Contractor: Enter Yes or No. 7j. Contractor/Subcontractor Name and Address: Same as item 7j under CDP Programs. 	<p>income calling higher or lower than 80 percent of the median for the area on the basis of the Secretary's findings that such variations are necessary because of prevailing levels of construction costs or unusually high or low income levels. Very low-income persons or families (including single persons) whose incomes do not exceed 50 percent of the median family income for the area, as determined by the Secretary with adjustments for smaller and larger families, except that the Secretary may establish income callings higher or lower than 50 percent of the median for the area on the basis of the Secretary's findings that such variations are necessary because of unusually high or low family incomes.</p> <p>Submit two (2) copies of this report to your local HUD Office within ten (10) days after the end of the reporting period you checked in item 4 on the front.</p> <p>Complete item 7i, only once for each contract/subcontract on each semi-annual report.</p> <p>Enter the prime contractor's ID in item 7i for all contracts and subcontracts. Include only contracts executed during this reporting period. Prime/PMs are to report all contract/subcontracts.</p> <p>Public Housing and Indian Housing Programs</p> <p>Prime/PMs are to report all contract/subcontracts. Include only contracts executed during this reporting period.</p> <ol style="list-style-type: none"> 1. Project Owner: Enter the name of the unit of government, agency or mortgagee entity submitting this report. Check box as appropriate. 2. Contact Person: Same as item 3 under CDP Programs. 3. Reporting Period: Check only one period. 4. Program Code: Enter the appropriate program code. 5. Grant/Project Number: Enter the HUD Project Number or Housing Development Grant or number assigned. 7a. Amount of Contract/Subcontract: Same as item 7b under CDP Programs. 7b. Type of Trade: Same as item 7c under CDP Programs. 7c. Business Racial/Ethnic/Gender Code: Same as item 7d under CDP Programs. 7d. Contractor Identification (ID) Number: Same as item 7i under CDP Programs. 7e. Women Owned Business: Enter Yes or No. 7f. Contractor Identification (ID) Number: Same as item 7i under CDP Programs. 7g. Section 3 Contractor: Enter Yes or No. 7h. Subcontractor Identification (ID) Number: Same as item 7i under CDP Programs. 7i. Section 3 Contractor: Enter Yes or No. 7j. Contractor/Subcontractor Name and Address: Same as item 7j under CDP Programs.
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Form HUD-2516 (3-96)

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****Notice of Availability of an Environmental Assessment/Habitat Conservation Plan and Receipt of an Application for a Permit for the Incidental Take of the Houston Toad (*Bufo houstonensis*) During Construction of One Single Family Residence on 0.5 Acres of the 3.354-Acre Lot 36, Unit 11, Block 2, in the Pine Forest Subdivision, Phase III, Bastrop County, Texas (Stahl)**

SUMMARY: Judson Stahl (Applicant) has applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to Section 10(a) of the Endangered Species Act (Act). The Applicant has been assigned permit number TE-032117-0. The requested permit, which is for a period of 10 years, would authorize the incidental take of the endangered Houston toad (*Bufo houstonensis*). The proposed take would occur as a result of the construction and occupation of one single family residence on 0.5 acres of the 3.354-Acre Lot 36, Unit 11, Block 2, in the Pine Forest Subdivision, Phase III, Bastrop County, Texas.

The Service has prepared the Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the incidental take application. A determination of jeopardy to the species or a Finding of No Significant Impact (FONSI) will not be made until at least 30 days from the date of publication of this notice. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the application should be received on or before November 2, 2000.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Room 4102, Albuquerque, New Mexico 87103. Persons wishing to review the EA/HCP may obtain a copy by contacting Tannika Engelhard, U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490-0057). Documents will be available for public inspection by written request, by appointment only, during normal business hours (8:00 to 4:30) at the U.S. Fish and Wildlife Service, Austin, Texas. Written data or comments concerning the application and EA/HCP should be submitted to the Supervisor, U.S. Fish and Wildlife Service, Austin, Texas, at the above address. Please refer to permit number

TE-032117-0 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Tannika Engelhard at the above U.S. Fish and Wildlife Service, Austin Office.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the "taking" of endangered species such as the Houston toad. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

Applicant

Judson Stahl plans to construct a single family residence on 0.5 acres of the 3.354-Acre Lot 36, Unit 11, Block 2, in the Pine Forest Subdivision, Phase III, Bastrop County, Texas. This action will eliminate 0.5 acres or less of Houston toad habitat and result in indirect impacts within the lot. The applicant proposes to compensate for this incidental take of the Houston toad by providing \$1,500.00 to the National Fish and Wildlife Foundation for the specific purpose of land acquisition and management within Houston toad habitat, as identified by the Service.

Geoffrey L. Haskett,

Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 00-25324 Filed 10-2-00; 8:45 am]

BILLING CODE 4510-55-P

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****Notice of Receipt of an Application and Availability of an Environmental Assessment/Habitat Conservation Plan for Issuance of an Endangered Species Act Section 10(a)(a)(B) Permit for a Permit for the Incidental Take of the Houston Toad (*Bufo houstonensis*) During Construction of One Permanent Single Family Residence and a Pond on Approximately 4.5 Acres of the 89-Acre Tract of Land Located Off of Cottletown Road, Bastrop County, Texas**

SUMMARY: Robert Gilfillan (Applicant) has applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to Section 10(a) of the Endangered Species Act (Act). The Applicant has been assigned permit number TE-033887-0. The requested permit, which is for a period of 5 years, would authorize the incidental take of the endangered

Houston toad (*Bufo houstonensis*). The proposed take would occur as a result of the construction and occupation of one permanent single family residence, one temporary home, and one pond on 4.5 acres of the 89-acre tract of land located off of Cottletown Road, Bastrop County, Texas.

The Service has prepared the Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the incidental take application. A determination of jeopardy to the species or a Finding of No Significant Impact (FONSI) will not be made until at least 30 days from the date of publication of this notice. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the application should be received on or before December 4, 2000.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Persons wishing to review the EA/HCP may obtain a copy by contacting Scott Rowin, U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490-0057). Documents will be available for public inspection by written request, by appointment only, during normal business hours (8:00 to 4:30) at the U.S. Fish and Wildlife Service, Austin, Texas. Written data or comments concerning the application and EA/HCP should be submitted to the Supervisor, U.S. Fish and Wildlife Service, Austin, Texas, at the above address. Please refer to permit number TE-033887-0 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Scott Rowin at the above U.S. Fish and Wildlife Service, Austin Office.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the "taking" of endangered species such as the Houston toad. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

Applicant

Robert Gilfillan plans to construct a permanent single family residence, a temporary home (trailer/mobile home) and a pond on 4.5 acres of the 89-acre tract of land located off of Cottletown Road, Bastrop County, Texas. The temporary home will occupy approximately 0.5 acres and will be

used during construction of the permanent residence and pond. Once completed it is anticipated the temporary home will be removed. This action will eliminate 4.5 acres or less of Houston toad habitat and result in indirect impacts within the property. The applicant proposes to compensate for this incidental take of the Houston toad by providing \$6,000.00 to the National Fish and Wildlife Foundation for the specific purpose of land acquisition and management within Houston toad habitat, as identified by the Service.

Renne Lohofener,

Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 00-25325 Filed 10-2-00; 8:45 am]

BILLING CODE 4510-55-U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Aquatic Nuisance Species Task Force Ruffe Control Committee Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Aquatic Nuisance Species (ANS) Task Force Ruffe Control Committee. The meeting topics are identified in the **SUPPLEMENTARY INFORMATION**.

DATES: The Ruffe Control Committee will meet from 1 p.m. to 5 p.m., Wednesday, October 25, 2000 and 10 a.m. to 3 p.m., Thursday, October 26, 2000.

ADDRESSES: The Ruffe Control Committee meeting will be held in the Comfort Inn, 4404 I-75 Business Spur, Sault Ste Marie, Michigan.

FOR FURTHER INFORMATION CONTACT: Sharon Gross, Executive Secretary, Aquatic Nuisance Species Task Force at 703-358-2308 or by e-mail at: sharon_gross@fws.gov or Thomas Busiahn, Ruffe Control Committee Chair, at 703-358-1718.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Aquatic Nuisance Species Task Force Ruffe Control Committee. The ANS Task Force was established by the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990.

Topics to be covered during the Ruffe Control Committee meeting include: the status of existing ruffe populations, a review of the eight components of the

ruffe control plan, an evaluation of the bait harvest prohibitions currently in place on Lake Superior, and other topics.

Minutes of the meeting will be maintained by the Executive Secretary, Aquatic Nuisance Species Task Force, Suite 851, 4401 North Fairfax Drive, Arlington, Virginia 22203-1622, and will be available for public inspection during regular business hours, Monday through Friday.

Dated: September 27, 2000.

Cathleen I. Short,

Co-Chair, Aquatic Nuisance Species Task Force, Assistant Director—Fisheries and Habitat Conservation.

[FR Doc. 00-25315 Filed 10-2-00; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT-924-1430-HN-003E; MTM 84984, MTM 86124]

Public Notice—Jurisdiction Transfer as Required by the Crow Boundary Settlement Act of 1994; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This document provides notification to the public and state and local governmental officials of the transfer of exclusive jurisdiction and administration of the surface estate of 12,465.32 acres of public lands from the Bureau of Land Management to the United States of America, Bureau of Indian Affairs in trust for the Crow Indian Tribe and shall be recognized as part of the Crow Indian Reservation.

EFFECTIVE DATES: December 2, 1999, December 8, 1999, December 16, 1999, January 12, 2000, February 24, 2000, and March 27, 2000.

FOR FURTHER INFORMATION CONTACT: Russell Sorensen, BLM Dillon Field Office, 1005 Selway Drive, Dillon, Montana 59725-9431, 406-683-8036. By virtue of the authority vested in the Secretary of the Interior pursuant to Section 5(d)(G) of the Crow Boundary Settlement Act of November 2, 1994, P.L. 103-444, it is ordered as follows:

1. Subject to valid existing rights, jurisdiction of the surface estate for the following described lands was transferred to the Bureau of Indian Affairs in trust for the Crow Indian Tribe on the dates listed below:

(a) December 2, 1999:

Principal Meridian

T. 3 S., R. 29 E.,

Sec. 10, all.

(b) December 8, 1999:

T. 6 S., R. 33 E.,

Sec. 12, NE $\frac{1}{4}$.

T. 1 S., R. 35 E.,

Sec. 16, all.

T. 3 S., R. 35 E.,

Sec. 16, all.

T. 2 S., R. 36 E.,

Sec. 16, all.

(c) December 16, 1999:

T. 3 S., R. 28 E.,

Sec. 36, NE $\frac{1}{4}$ SE $\frac{1}{4}$.

(d) January 12, 2000:

T. 3 S., R. 33 E.,

Sec. 16, S $\frac{1}{2}$ S $\frac{1}{2}$.

T. 3 S., R. 34 E.,

Sec. 36, lot 4, NW $\frac{1}{4}$ SW $\frac{1}{4}$.

T. 4 S., R. 37 E.,

Sec. 21, all.

T. 4 S., R. 38 E.,

Sec. 16: NE $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$, and SW $\frac{1}{4}$ SW $\frac{1}{4}$.

T. 5 S., R. 36 E.,

Sec. 2, SE $\frac{1}{4}$;

Sec. 11, E $\frac{1}{2}$.

(e) February 24, 2000:

T. 3 S., R. 29 E.,

Sec. 11, all.

(f) March 27, 2000:

T. 1 S., R. 35 E.,

Sec. 36, all.

T. 1 S., R. 36 E.,

Sec. 16, N $\frac{1}{2}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$, and N $\frac{1}{2}$ SE $\frac{1}{4}$;

Sec. 36, all.

T. 2 S., R. 35 E.,

Sec. 16, all.

T. 2 S., R. 36 E.,

Sec. 36, all.

T. 3 S., R. 35 E.,

Sec. 36, all.

T. 3 S., R. 36 E.,

Sec. 16, all.

T. 4 S., R. 37 E.,

Sec. 1, S $\frac{1}{2}$ N $\frac{1}{2}$, and S $\frac{1}{2}$.

T. 5 S., R. 26 E.,

Sec. 16, SE $\frac{1}{4}$ NE $\frac{1}{4}$, and SE $\frac{1}{4}$.

T. 5 S., R. 30 E.,

Sec. 3, lots 1 to 4, inclusive, S $\frac{1}{2}$ N $\frac{1}{2}$, and S $\frac{1}{2}$.

T. 5 S., R. 33 E.,

Sec. 36, all.

T. 6 S., R. 30 E.,

Sec. 1, lots 1 to 7, inclusive, SW $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$, and W $\frac{1}{2}$ SE $\frac{1}{4}$;

Sec. 2, lots 1 to 4, inclusive, S $\frac{1}{2}$ N $\frac{1}{2}$, and S $\frac{1}{2}$.

The areas described aggregate 12,465.32 acres in Big Horn and Yellowstone Counties, Montana.

2. The transfer of the above described surface estate for such lands and all activities conducted thereon vests custody and accountability unto the United States of America, on behalf of the Bureau of Indian Affairs, in trust for the Crow Indian Tribe.

Dated: September 20, 2000.

Thomas P. Lonnie,

Deputy State Director, Division of Resources.

[FR Doc. 00-25301 Filed 10-2-00; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR**Bureau of Land Management****[AZ-050-00-1220-PA; 8322]****Arizona: Closure to Camping and Motor Vehicle Access, Yuma County, Arizona, and Imperial County, CA****AGENCY:** Bureau of Land Management, Interior.**ACTION:** Notice of closure to motor vehicle traffic and limitation of public access to day use only on public lands. The lands are located on the east side of the Lower Colorado River adjacent to Laguna Dam.**SUMMARY:** Notice is hereby given that all motor vehicle access is prohibited and public use is limited to daylight hours only in the area identified as the Protection and Security Zone of Laguna Dam. The closure area is located within T.7 S., R.22 W., Sec. 14, NW¼.**SUPPLEMENTARY INFORMATION:** Public lands adjacent to Laguna Dam, which are located within the Protection and Security Zone Area, are closed to motor vehicles, and public access is limited to day use only. This area is being closed to protect public health and safety, to prevent further resource and environmental degradation and for the protection and security of Laguna Dam. The closure will also directly benefit the public by reducing health and safety problems presently occurring. This closure will reduce problems associated with trespass, dust, illegal tree cutting, soil compaction, illegal trash and sewage disposal, unauthorized use of adjacent fee facilities and human-caused fires.

These conditions are occurring and have intensified with increasing numbers of campers and other users located within this confined area. Authority for this action is contained in 43 CFR 8364.1. This closure to motor vehicle traffic use and limitation on public use shall apply to all persons and shall remain in effect until further notice.

Exemptions to this order are granted to law enforcement, emergency vehicles, and agency personnel in the course of official duties. All other exemptions to this order are by written authorization of the Yuma Field Office Manager only.

Maps of this area are available at the Yuma Field Office, 2555 Gila Ridge Road, Yuma, Arizona. Violation of this regulation is punishable by a fine not to exceed \$100,000 and/or imprisonment not to exceed 12 months. Vehicles found in violation of this closure notice are subject to being towed at the owners expense.

EFFECTIVE DATE: October 15, 2000.**FOR FURTHER INFORMATION CONTACT:**

Mark Lowans, Yuma Field Office, 2555 Gila Ridge Road, Yuma, Arizona 85365 (520) 317-3210.

Dated: September 20, 2000.

Maureen A. Merrell,*Assistant Field Manager/Acting Field Manager.*

[FR Doc. 00-25363 Filed 10-2-00; 8:45 am]

BILLING CODE 4310-32-U**DEPARTMENT OF THE INTERIOR****Bureau of Land Management****[MT-929-00-1910-HE-4677-UT940]****Montana: Filing of Amended Protraction Diagram Plats****AGENCY:** Bureau of Land Management, Montana State Office, Interior.**ACTION:** Notice.**SUMMARY:** The plats of the amended protraction diagrams accepted September 15, 2000, of the following described lands are scheduled to be officially filed in the Montana State Office, Billings, Montana, thirty (30) days from the date of this publication.**Tps. 11, 12, 13, and 14 N., Rs. 24, 25, and 26 W.**

The plat, representing the Amended Protraction Diagram 21 Index of unsurveyed Townships 11, 12, 13, and 14 North, Ranges 24, 25, and 26 West, Principal Meridian, Montana, was accepted September 15, 2000.

T. 11 N., R. 25 W.

The plat, representing Amended Protraction Diagram 21 of unsurveyed Township 11 North, Range 25 West, Principal Meridian, Montana, was accepted September 15, 2000.

T. 12 N., R. 25 W.

The plat, representing Amended Protraction Diagram 21 of unsurveyed Township 12 North, Range 25 West, Principal Meridian, Montana, was accepted September 15, 2000.

T. 12 N., R. 26 W.

The plat, representing Amended Protraction Diagram 21 of unsurveyed Township 12 North, Range 26 West, Principal Meridian, Montana, was accepted September 15, 2000.

T. 13 N., R. 24 W.

The plat, representing Amended Protraction Diagram 21 of unsurveyed Township 13 North, Range 24 West, Principal Meridian, Montana, was accepted September 15, 2000.

T. 13 N., R. 26 W.

The plat, representing Amended Protraction Diagram 21 of unsurveyed Township 13 North, Range 26 West,

Principal Meridian, Montana, was accepted September 15, 2000.

T. 14 N., R. 24 W.

The plat, representing Amended Protraction Diagram 21 of unsurveyed Township 14 North, Range 24 West, Principal Meridian, Montana, was accepted September 15, 2000.

T. 14 N., R. 25 W.

The plat, representing Amended Protraction Diagram 21 of unsurveyed Township 14 North, Range 25 West, Principal Meridian, Montana, was accepted September 15, 2000.

T. 14 N., R. 26 W.

The plat, representing Amended Protraction Diagram 21 of unsurveyed Township 14 North, Range 26 West, Principal Meridian, Montana, was accepted September 15, 2000.

Tps. 17, 18, 19, and 20 N., Rs. 30, 31, 32, and 33 W.

The plat, representing the Amended Protraction Diagram 30 Index of unsurveyed Townships 17, 18, 19, and 20 North, Ranges 30, 31, 32, and 33 West, Principal Meridian, Montana, was accepted September 15, 2000.

T. 17 N., R. 30 W.

The plat, representing Amended Protraction Diagram 30 of unsurveyed Township 17 North, Range 30 West, Principal Meridian, Montana, was accepted September 15, 2000.

T. 18 N., R. 30 W.

The plat, representing Amended Protraction Diagram 30 of unsurveyed Township 18 North, Range 30 West, Principal Meridian, Montana, was accepted September 15, 2000.

T. 18 N., R. 31 W.

The plat, representing Amended Protraction Diagram 30 of unsurveyed Township 18 North, Range 31 West, Principal Meridian, Montana, was accepted September 15, 2000.

T. 19 N., R. 31 W.

The plat, representing Amended Protraction Diagram 30 of unsurveyed Township 19 North, Range 31 West, Principal Meridian, Montana, was accepted September 15, 2000.

T. 20 N., R. 30 W.

The plat, representing Amended Protraction Diagram 30 of unsurveyed Township 20 North, Range 30 West, Principal Meridian, Montana, was accepted September 15, 2000.

T. 20 N., R. 31 W.

The plat, representing Amended Protraction Diagram 30 of unsurveyed Township 20 North, Range 31 West, Principal Meridian, Montana, was accepted September 15, 2000.

T. 20 N., R. 32 W.

The plat, representing Amended Protraction Diagram 30 of unsurveyed

Township 20 North, Range 32 West, Principal Meridian, Montana, was accepted September 15, 2000.

T. 20 N., R. 33 W.

The plat, representing Amended Protraction Diagram 30 of unsurveyed Township 20 North, Range 33 West, Principal Meridian, Montana, was accepted September 15, 2000.

The amended protraction diagrams were prepared at the request of the U.S. Forest Service to accommodate Revision of Primary Base Quadrangle Maps for the Geometrics Service Center.

A copy of the preceding described plats of the amended protraction diagrams accepted September 15, 2000, will be immediately placed in the open files and will be available to the public as a matter of information.

If a protest against these amended protraction diagrams, accepted September 15, 2000, as shown on these plats, is received prior to the date of the official filings, the filings will be stayed pending consideration of the protests.

These particular plats of the amended protraction diagrams will not be officially filed until the day after all protests have been accepted or dismissed and become final or appeals from the dismissal affirmed.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 5001 Southgate Drive, P.O. Box 36800, Billings, Montana 59107-6800.

Dated: September 19, 2000.

Steven G. Schey,
Chief Cadastral Surveyor, Division of Resources.

[FR Doc. 00-25362 Filed 10-02-00; 8:45 am]

BILLING CODE 4310-DN-P

DEPARTMENT OF THE INTERIOR

National Park Service

Finding of No Significant Impact and Notice of Decision for the Placement of Wireless Telecommunication Facility for Bell Atlantic Mobile (Verizon Wireless) at the Ridge Trail Site in Great Falls Park, Virginia

AGENCY: National Park Service, Interior.

ACTION: Availability of the Finding of No Significant Impact (FONSI) And Notice of Decision for the Placement of Wireless Telecommunication Facility for Bell Atlantic Mobile (Verizon Wireless) at the Ridge Trail Site in Great Falls Park, Virginia.

SUMMARY: Pursuant to the Council on Environmental Quality Regulations and National Park Service Policy, the National Park Service (NPS) announces the availability of a Finding of No Significant Impact (FONSI) And Notice of Decision for the placement of a

wireless telecommunication facility for Verizon Wireless at the Ridge Trail site in Great Falls Park, Virginia. Great Falls Park is a unit of the George Washington Memorial Parkway (GWMP). The Final Environmental Assessment includes several alternatives showing a monopole at different heights, different building sizes and an alternative technology. The alternative of a facility no higher than 126 feet disguised as a "tree" with limited ground level support structures was chosen after review of public comments from two public hearings and from written comments. This alternative provides increased service for the applicant to meet the needs of its customers while minimizing the visual impacts from various locations along the Potomac River near Great Falls in both Virginia and Maryland including the Chesapeake and Ohio Canal National Historical Park and the GWMP. It also mitigates any impact to historic resources at the site of the facility. This action will lead to the issuance of a Right-of-Way permit to Verizon Wireless. Along with the tower and the support buildings, the permit will provide for improvements to a portion of the Ridge Trail, for the purposes of construction and maintenance activities associated with the wireless communications facility. If certain lights are required for aircraft navigation, Verizon Wireless will be required to develop and install a mechanism that will allow the USPP and other law enforcement agencies to activate the light when needed for rescue operations. If it is not possible, or regulatory agencies do not allow this mechanism for the light to be controlled, the height of the tower will be lowered to tree canopy height (approximately 100 feet) where it will not be as visible and will not interfere with aircraft flights. If technological advances result in the capability of the applicant to provide this service to customers without the dedication and use of public lands, all facilities will be removed and the lands restored to the satisfaction of the NPS. This action is effective on the date of signature; however, there are reviews by various agencies, either required or recommended, that may alter the final design appearance of the facility. Regardless of those reviews and revisions, the height will not be greater than 126 feet, the support buildings will not rise higher than 20 feet above grade, and the land taken by the perimeter fence and all structures will not exceed 2,000 square feet.

DATES: The FONSI and Notice of Decision was signed by the National Capital Regional Director on August 30, 2000.

ADDRESSES: Copies of the FONSI, Notice of Decision and the Final Environmental Assessment will be available for public inspection at GWMP Headquarters, Turkey Run Park, McLean, VA, Monday through Friday, 8:00 a.m. to 4:00 p.m.; and at Great Falls Park Visitor Center on weekdays from 10 a.m. to 5 p.m. and on weekends from 10 a.m. to 6pm. An electronic copy will be available on the Great Falls Park website: http://www.nps.gov/gwmp/GRFA_EA/grfa_ea_title.htm. A limited number of copies are also available upon request by contacting George Washington Memorial Parkway at (703) 289-2500.

SUPPLEMENTARY INFORMATION: Bell Atlantic Mobile (Verizon Wireless) proposed to construct a telecommunications facility.

FOR FURTHER INFORMATION CONTACT: Ron Blain at (703) 289-2516.

Wandafa B. Hollingsworth,
Acting Superintendent, George Washington Memorial Parkway.

[FR Doc. 00-25286 Filed 10-2-00; 8:45 am]

BILLING CODE 4310-70-P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[DES-00-417]

East Bay Municipal Utility District Supplemental Water Supply Project

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability of draft recirculated environmental impact report/supplemental environmental impact statement (REIR/SEIS).

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) and the California Environmental Quality Act, the Bureau of Reclamation (Reclamation) and the East Bay Municipal Utility District (EBMUD) have prepared a joint REIR/SEIS for the East Bay Municipal Utility District Supplemental Water Supply Project. Reclamation and EBMUD originally prepared a draft environmental impact report/draft environmental impact statement (DEIR/DEIS) for the proposed project in November 1997.

The proposed action is for EBMUD to obtain a supplemental water supply to help reduce customer deficiencies during droughts, and provide system reliability and to allow EBMUD to use its existing contract with Reclamation for delivery of water from the American River.

DATES: The REIR/SEIS will be available for a 45-day public review period.

Comments are due on November 20, 2000. Public hearings on the REIR/SEIS will be held on October 17, 2000 from 7 p.m. to 9 p.m. in Sacramento and on October 19, 2000 from 7 p.m. to 9 p.m. in Oakland.

ADDRESSES: The public hearings will be held at the Sacramento Red Lion Inn, Yosemite Room, 1401 Arden Way, Sacramento, CA and at the EBMUD Office, 375 11th Street, Oakland CA 94623.

Copies of the REIR/SEIS may be requested from Mr. Kurt Ladensack, Water Supply Improvements Division, EBMUD, P.O. Box 24055, MS #305, Oakland, CA 94623, telephone (510) 287-1197.

See **SUPPLEMENTARY INFORMATION** section for locations where copies of the REIR/SEIS are available for inspection.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Schroeder, Environmental Specialist, U.S. Bureau of Reclamation, Central California Area Office, 7794 Folsom Dam Road, Folsom, CA 95630, telephone (916) 988-1707, or Mr. Kurt Ladensack, Water Supply Improvements Division, EBMUD, P.O. Box 24055, MS #305, Oakland, CA 94623, telephone (510) 287-1197.

SUPPLEMENTARY INFORMATION: The U.S. Bureau of Reclamation (Reclamation) and the East Bay Municipal Utility District (EBMUD) have prepared an REIR/SEIS for the East Bay Municipal Utility District Supplemental Water Supply Project. Reclamation and EBMUD originally prepared a draft environmental impact report/draft environmental impact statement (DEIR/DEIS) for the proposed project in November 1997.

EBMUD currently holds a contract with Reclamation, signed in 1970, for delivery of up to 150,000 acre-feet per year from the existing Folsom South Canal (FSC). The existing contract specifies a delivery location at an existing turnout structure near Grant Line Road in Sacramento County. The proposed action is for EBMUD to obtain a supplemental water supply to help in reducing customer deficiencies during droughts, and providing system reliability and to allow EBMUD to use its existing contract with Reclamation for delivery of water from the American River. Two primary alternatives were considered in the 1997 DEIR/DEIS, and alternate project configurations of one of these primary alternatives were also considered.

The first alternative considered in the 1997 DEIR/DEIS was an EBMUD-only project that involves deliveries from the American River via FSC to a new pipeline connection between FSC in

south Sacramento County and EBMUD's Mokelumne Aqueducts in San Joaquin County. Alternate project alternatives considered would involve pipeline connections from the turnout location described above, which would not require an amendment of the existing water service contract, and from the terminus of FSC, which would require an amendment of the water service contract.

The second alternative considered in the 1997 DEIR/DEIS involves a joint project between EBMUD, the City of Sacramento (City), and the County of Sacramento (County). Under this project alternative, water for EBMUD and the County would be delivered through a new intake location on the American River near its confluence with the Sacramento River, which would require an amendment of the water service contract. The City and County have subsequently indicated that they are not interested in pursuing such a joint project.

During public review of the 1997 DEIR/DEIS, EBMUD and Reclamation received a number of comments. In particular, some commenters focused on the range of alternatives considered in detail in the 1997 DEIR/DEIS, and on certain impact assessment methodologies related to water temperatures and fishery resources. After reviewing these comments, EBMUD and Reclamation have decided to prepare this REIR/SEIS to address these specific comments.

This REIR/SEIS describes the environmental effects of taking delivery of water under EBMUD's contract from the lower American River near its confluence with the Sacramento River, two locations on the Sacramento River between its confluence with the American River and Freeport, California, and the Bixler location in the Sacramento-San Joaquin River Delta. Emphasis is directed toward potential effects related to American River fisheries, endangered species, CVP water users, pipeline construction, and biological resources in the EBMUD service area.

Reclamation and EBMUD are releasing the REIR/SEIS for a 45-day public review period, after which the Final EIR/EIS will be prepared and released to the public. After the required 30-day waiting period, Reclamation will be preparing a Record of Decision (ROD) and EBMUD will be preparing a Notice of Determination, both of which will state the action that will be implemented and will discuss all factors leading to the respective decision of each agency. When an alternative is selected and the ROD is signed,

Reclamation and EBMUD will resume negotiations on the amendatory contract to develop contract terms that more accurately reflect the selected alternative.

Copies of the REIR/SEIS are available for inspection at the following locations:

- East Bay Municipal Utility District at 375 Eleventh Street in Oakland CA 94607-4240.
- Sacramento County Water Agency at 827 Seventh Street, Room 301 in Sacramento CA 95814.
- City of Sacramento Utilities Department at 5770 Freeport Boulevard, Suite 100 in Sacramento CA 95822.
- Sacramento County Clerk-Recorder's Office at 600 Eighth Street in Sacramento CA 95814.
- Bureau of Reclamation, Office of Public Affairs at 2800 Cottage Way in Sacramento CA 95825.
- Bureau of Reclamation, Folsom Area Office at 7794 Folsom Dam Road in Folsom CA 95630.
- Library, Bureau of Reclamation at 6th Avenue and Kipling, Room 167, Building 67, Denver Federal Center in Denver CO 80225-0007.
- Natural Resources Library, U.S. Department of the Interior at 1849 C Street NW, Main Interior Building in Washington DC 20240-0001.
- Sacramento Central Library at 828 I Street in Sacramento CA.
- Lodi Public Library at 201 W. Locust Street in Lodi CA 95240.
- Caesar Chavez Central Library at 605 N. El Dorado Street in Stockton CA 95202.
- Science, Social Science & Government Documents Department, Oakland Public Library at 125 14th Street in Oakland CA 94612.
- Contra Costa County Clerk's Office at 730 Las Juntas in Martinez CA 94553.
- Alameda County Clerk's Office at 1225 Fallen Street in Oakland CA 94612.
- San Joaquin County Clerk's Office at 24 S. Hunter, Room 304 in Stockton CA 95202.
- Elk Grove Branch Library at 8962 Elk Grove Boulevard in Elk Grove CA 95624.
- Rancho Cordova Community Library at 9845 Folsom Boulevard in Rancho Cordova CA 95827.
- Herald Fire Station at 12746 Ivie Road in Herald CA 95638.
- Galt Branch Library at 1000 Caroline Avenue in Galt CA 95632.
- Tracy Public Library at 20 E. Eaton Avenue in Tracy CA 95376.
- Amador Public Library at 25 East Main in Ione CA 95640.
- Calaveras County Central Library at 891 Mountain Ranch Road in San Andreas CA 95249.

- Community Development Department at 104 Oak Street in Brentwood CA 94513.
- City Hall at 708 3rd Street in Brentwood CA 94513.
- Brentwood Library at 751 3rd Street in Brentwood CA 94513.
- Antioch Library in 501 West 18th Street in Antioch CA 95409.
- Antioch Planning Department at Third and H Street in Antioch CA 94531.
- City Clerk/Records Department at 65 Civic Avenue in Pittsburg CA 94565.
- Pittsburg Library at 80 Power Avenue in Pittsburg CA 94565.
- Contra Costa County Public Library at 1664. N. Broadway in Walnut Creek CA 94596.

Dated: September 27, 2000.

Lester A. Snow,

Regional Director.

[FR Doc. 00-25341 Filed 10-2-00; 8:45 am]

BILLING CODE 4310-MN-P

DEPARTMENT OF JUSTICE

Justice Management Division; Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: Notice of Information Collection Under Review; Extension of a currently approved collection; Certification of Identity.

The Department of Justice, Justice Management Division, has submitted the following information collection request to the Office of Management and Budget for review and clearance in accordance with the Paperwork Reduction Act of 1995. This proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until December 4, 2000.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Patricia D. Harris, at 301-436-1018 or write to FOIA/PA Coordinator, Mail Management Services, Facilities and Administrative Services Staff, Justice Management Division, United States Department of Justice, 10th and Pennsylvania Ave., NW., Washington, DC 20530.

Overview of This Collection

(1) *The type of information collection:* Extension of a currently approved collection.

(2) *The title of the form/collection:* Certification of Identity.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form: DOJ-361. Facilities and Administrative Services Staff, Justice Management Division, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals. The information collection will be used by the Department to identify individuals requesting certain records under the Privacy Act. Without this form an individual cannot obtain the information requested.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 21,000 respondents at 15 minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 5,250 annual burden hours.

If additional information is required contact Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1220, 1331 Pennsylvania Ave, NW, Washington, DC 20530.

Dated: September 27, 2000.

Robert B. Briggs,

Department Clearance Officer, Department of Justice.

[FR Doc. 00-25342 Filed 10-2-00; 8:45 am]

BILLING CODE 4410-26-M

DEPARTMENT OF JUSTICE

Justice Management Division; Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: Notice of Information Collection Under Review; Extension of Previously Approved Collection, Department of Justice Procurement Blanket Clearance.

The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until December 4, 2000. Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points;

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time should be directed to Mr. Larry Silvis. If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Mr. Larry Silvis, (202) 616-3754, U.S. Department of Justice, Justice Management Division, Management and Planning Staff, Suite 1400, National Place Building, 1331 Pennsylvania Avenue, NW, Washington, D.C. 20530.

Overview of this Information Collection

(1) *Type of information collection:* Extension of Current Collection.

(2) *The title of the form/collection:* Department of Justice Procurement blanket Clearance.

(3) *The agency form number, if any, and applicable component of the Department sponsoring the collection:* Procurement Solicitation Documents, Justice Management Division, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Commercial organizations and individuals who voluntarily submit offers and bids to compete for contract awards to provide supplies and services required by the Government. All work statements and pricing data are required to evaluate the contractors bid or proposal.

(5) *An estimate of the total number of respondents and the amount of time for an average respondent to respond:* 7,462 respondents, 20 hours average response time..

(6) *An estimate of the total public burden (in hours) associated with this collection:* 149,240 hours annually..

If additional information is required contact: Mr. Robert B. Briggs, Department Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1220, National Place Building, 1331 Pennsylvania Avenue, NW, Washington, DC 20530.

Dated: September 27, 2000.

Robert B. Briggs,

Department Clearance Officer, Department of Justice.

[FR Doc. 00-25343 Filed 10-2-00; 8:45 am]

BILLING CODE 4410-26-M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

In accordance with 28 CFR 50.7, notice is hereby given that on September 12, 2000, a proposed Consent Decree ("Decree") in *United States v. Northwestern Steel and Wire Company*, Civil Action No. 00 C 3700 was lodged with the United States District Court for the Northern District of Illinois.

In this action the United States sought injunctive relief and civil penalties for alleged violations of the Clean Air Act, 42 U.S.C. § 741 *et seq.*, and applicable regulations thereunder, including provisions of the Illinois State Implementation Plan ("SIP") and New Source Performance Standards applicable to Northwestern Steel and Wire Company's ("NWSW's") electric arc furnaces ("EAFs") in Sterling, Illinois. The proposed Decree requires NWSW to achieve, demonstrate and maintain compliance with the Clean Air Act and applicable regulations. The

Decree prohibits NWSW from operating its EAF No. after August 15, 2000 unless NWSW installs pollution capture and control equipment meeting requirements for a new source and obtains applicable construction or operating permits from the Illinois Environmental Protection Agency. In addition, the Decree requires NWSW to complete emissions testing of EAF No. 8, where NWSW has substantially upgraded the EAF and associated air pollution controls, and to submit the results of this testing to U.S. EPA by January 1, 2001. The Decree also requires NWSW to comply at all times with SIP particulate and opacity requirements at EAF No. 7, except as authorized in applicable permits for the facility. Finally, the proposed Decree provides for payment of a civil penalty in the amount of \$434,460 and for implementation of three Supplemental Environmental Projects ("SEPs"), including a road paving project, installation of a new baghouse dust transfer system and installation of a new electrolytic macroetching machine intended to reduce emissions of particulate matter and hydrochloric acid vapors at the facility.

The Department of Justice will receive for a period of thirty (30) days from the date of the publication comments relating to the proposed Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, D.C. 20044-7611, and should refer to *United States v. Northwestern Steel and Wire Company*, Civil Action No. 00 C 3700, D.J. Ref. No. 90-5-2-1-2173.

The proposed Decree may be examined at the Office of the United States Attorney, 219 South Dearborn Street, Chicago, IL 60604, and at U.S. EPA Region 5, Office of Regional Counsel, 77 West Jackson Boulevard, Chicago, IL 60604. A copy of the proposed Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611. In requesting a copy, please enclose a check in the amount of \$7.00 (25 cents per page reproduction costs) payable to the Consent Decree Library.

Bruce S. Gelber,

Principal Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00-25302 Filed 10-25-00; 8:45 am]

BILLING CODE 4410-15-M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response Compensation and Liability Act

Notice is hereby given that on August 4, 2000 a proposed partial consent decree in the action entitled *United States v. Woodward Metal Processing, Corp. et al.*, Civil Action No. 98-2736 (JWB/GDH), was lodged with the United States District Court for the District of New Jersey.

In this action, the United States sought the recovery of response costs incurred in connection with a removal action at the Woodward Metal Processing Corporation Site, located at 125 Woodward Street, Jersey City, New Jersey ("Site"), pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9607. The proposed consent decree, if entered by the Court, would resolve the claims of the United States against Defendant Muriel Rosenberg Fierman ("Settling Defendant"). Under the proposed consent decree, Settling Defendant would pay the United States \$100,000 in five annual installments of \$20,000 each, plus interest. That amount, together with the response costs already recovered by the United States in settlements with other parties, equals approximately \$1,957,400 of approximately \$2,364,500 in total response costs incurred by the United States in connection with the Site.

The U.S. Department of Justice will receive, for a period of thirty (30) days from the date of publication of this Notice, comments relating to the proposed consent decree. Any comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Washington, D.C. 20044-7611, and should reference the following case name and number: *United States v. Woodward Metal Processing Corp., et al.*, DJ # 90-11-2-1299/1.

The proposed consent decree may be examined at the offices of EPA Region II, located at 290 Broadway, New York, New York. A copy of the proposed consent decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, D.C. 20044-7611. In requesting a copy, please enclose a check in the amount of \$7.25 (25 cents

per page reproduction cost) payable to the Consent Decree Library.

Bruce S. Gelber,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00-25303 Filed 10-2-00; 8:45 am]

BILLING CODE 4410-15-M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Auto Body Consortium, INC.—“Hot Metal Gas Forming” (“HMGF”)

Notice is hereby given that, on July 31, 2000, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301, *et seq.* (“the Act”), Auto Body Consortium, Inc.—“Hot Metal Gas Forming” (“HMGF”) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act’s provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Boeing Commercial aircraft, Seattle, WA has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Auto Body Consortium, Inc.—“Hot Metal Gas Forming” (“HMGF”) intends to file additional written notification disclosing all changes in membership.

On December 21, 1998, Auto Body Consortium, Inc.—“Hot Metal Gas Forming” (“HMGF”) filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on February 18, 1999 (64 FR 8124).

The last notification was filed with the Department of March 5, 1999. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on May 26, 1999 (964 FR 28516).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 00-25305 Filed 10-2-00; 8:45 am]

BILLING CODE 4410-11-M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Biotechnology Research and Development Corporation (“BRDC”)

Notice is hereby given that, on August 18, 2000, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (“the Act”), Biology Research and Development Corporation (“BRDC”) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act’s provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, BASF Corporation, Triangle Park, NC, owned by BASF AG, Limburgerhof, Germany has been added as a party to this venture. Also, American Home Products Corporation, Parsippany, NJ has been dropped as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and BRDC intends to file additional written notification disclosing all changes in membership.

On April 13, 1988, BRDC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on May 12, 1988 (53 FR 16919).

The last notification was filed with the Department on February 11, 2000. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on August 9, 2000 (65 FR 48735).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 00-25304 Filed 10-2-00; 8:45 am]

BILLING CODE 4410-11-M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Enterprise Computer Telephony Forum

Notice is hereby given that, on June 12, 2000, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (“the Act”), Enterprise Computer

Telephony Forum (“ECTF”) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act’s provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Dialogic, an Intel company, Parsippany, NJ; Locus Dialogue, Montreal, Quebec, Canada; Comsys International by, Zeist, The Netherlands; Eicon Technology Corporation, Montreal, Quebec, Canada; Group 2000 Nederland BV, Almelo, The Netherlands; ipGen, Inc., Dallas, TX; Lasat Networks, Bagsvaerd, Denmark; Necsy SPS, Padova, Italy; NetPhone, Marlborough, MA; NovaVox AG, Zuerich, Switzerland; and Temic, Stuttgart, Germany, have been added as parties to this venture. Also, Amteva Technologies, Glen Allen, VA; CSS TrexCom, Inc., Norcross, GA; Cisco Systems, Manchester, NH; Dialogic Corporation, Parsippany, NJ; Excel Switching Corporation, Hyannis, MA; Microsoft Corporation, Redmond, WA; Nokia Networks, Helsinki, Finland; Nortel Networks, Verdun, Quebec, Canada; SI Logic Limited, Aldermaston, England, United Kingdom; Analogic Corporation, Peabody, MA; Ariel Corporation, Carnbury, NJ; Artesyn Communications Products, Inc., Madison, WI; Bell Actimedia, Scarborough, Ontario, Canada; BST Communication Technology, Ltd., Guan Zhou, Peoples Republic of China; Comverse Network Systems, Andover, MA; Daimler-Benz Aerospace, Stuttgart, Germany; De Te We Kommunikationen, Berlin, Germany; ERNI Components, Inc., Chester, VA; E.T.R.I, Taejon, Republic of Korea; Executone, Milford, CT; Force Computers, San Jose, CA; Frequentis Nachrichtentechnik Ges.m.b.H, Vienna, Austria; Global Communications Systems Research, Alexandria, VA; Hewlett Packard Company, Cupertino, CA; Intervoice, Dallas, TX; Marconi Communications, Coventry, England, United Kingdom; Mitsubishi Electronic Corporation, Kanagawa, Japan; Periphonics Corporation, Bohemia, NY; Sonetech, Inc., Sterling, VA; Syntellect, Inc., Phoenix, AZ; Teloquent Communications, Billerica, MA; and Xerox Coporation, Palo Alto, CA, have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and ECTF intends

to file additional written notifications disclosing all changes in membership.

On February 20, 1996, ECTF filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on May 13, 1996 (61 FR 22074).

The last notification was filed with the Department on January 6, 2000. A notice was published in the **Federal Register** on July 11, 2000 (65 FR 42725).

Constance K. Robinson,

Director of Operations Antitrust Division.

[FR Doc. 00-25307 Filed 10-2-00; 8:45 am]

BILLING CODE 4410-11-M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to The National Cooperative Research and Production Act of 1993—Southwest Research Institute ("SwRI"): Joint Industry Program—Development of an Instrument for Corrosion Detection in Insulated Pipes Using a Magnetostrictive Sensor

Notice is hereby given that, on July 12, 2000, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301, *et seq.* ("the Act"), Southwest Research Institute ("SwRI"): Joint Industry Program—Development of an Instrument for Corrosion Detection in Insulated Pipes Using a Magnetostrictive Sensor has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership/project status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Ishikawajima-Harima Heavy Industries Co., Ltd., Yokohama, Japan has been added as a party to this venture; Southwest Research Institute, San Antonio, TX has been dropped as a party to this venture; and the period of performance has been extended to September 30, 2000. In addition, Chinese Petroleum Corporation, Taipei, Taiwan, Japan Energy Corporation, Niizo-Minami, Japan and TOA nondestructive Inspection Co., Ltd., Kitakyushu, Japan have been participants in this group research project since December 11, 1998, December 1, 1997 and April 28, 1998 respectively, but due to an administrative oversight were inadvertently not noted as such in

previous notices to the Federal Trade Commission and the Department of Justice.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and southwest Research Institute ("SwRI"): Joint Industry Program—Development of an Instrument for Corrosion Detection in Insulated pipes Using a Magnetostrictive Sensor intends to file additional written notification disclosing all changes in membership.

On October 25, 1995, Southwest Research Institute ("SwRI"): Joint Industry Program—Development of an Instrument for Corrosion Detection in Insulated Pipes Using a Magnetostrictive Sensor filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on February 23, 1996 (61 FR 7020). The last notification was filed with the Department on March 6, 2000. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on July 11, 2000 (65 FR 42727).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 00-25308 Filed 10-2-00; 8:45 am]

BILLING CODE 4410-11-M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—VSI Alliance

Notice is hereby given that, on July 13, 2000, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* ("the Act"), VSI Alliance has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Alcatel Internetworking (PE), Inc., Spokane, WA; Artec Design Group, Tallinn, Estonia; Ben Cheese Electronic Design, Royston, United Kingdom; Chip Implementation Center, Hsin-Chu, Taiwan; Johan Cockx (individual member), Leuven, Belgium; Dr. Peter Green (individual member), Manchester, United Kingdom; Innoveda Ltd., Herzliyya, Israel; Lavetate Design

Systems, Inc., Beaverton, OR; Malardalen University, Vasteras, Sweden; Pixelfusion Ltd., Bristol, Avon, United Kingdom; Siroyan Limited, Reading, England, United Kingdom; Socip Group of Korea, Seoul, Republic of Korea; Thomson Multimedia, Villingen-Schwenningen, Germany; and TriMedia Technologies, Sunnyvale, CA have been added as parties to this venture. Also, Actel Corporation, Sunnyvale, CA; Escalade, Santa Plano, TX; NetLogic Microsystems, Inc., Mountain View, CA; SandCraft, Inc., Santa Clara, CA; Scottish Enterprise, Livingston, Scotland, United Kingdom; and VAutomation, Inc., Nashua, NH have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and VSI Alliance intends to file additional written notification disclosing all changes in membership.

On November 29, 1996, VSI Alliance filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 4, 1997 (62 FR 9812).

The last notification was filed with the Department on April 18, 2000. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on June 30, 2000 (65 FR 40694).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 00-25306 Filed 10-2-00; 8:45 am]

BILLING CODE 4410-11-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to section 1301.33(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on July 27, 2000, Chattem Chemicals, Inc., 3801 St. Elmo Avenue, Building 18, Chattanooga, Tennessee 37409, made application by letter to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
N-Ethylamphetamine (1475)	I
4-Methoxyamphetamine (7411) ...	I
2,5-Dimethoxyamphetamine (7396).	I
Difenoxin (9168)	I

Drug	Schedule
Methylphenidate (1724)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Diphenoxylate (9170)	II
Hydrocodone (9193)	II

The firm plans to bulk manufacture the listed controlled substances to produce products for distribution to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than December 4, 2000.

Dated: September 25, 2000.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 00-25370 Filed 10-2-00; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (OJP)-1303]

Meeting of the Global Justice Information Network Advisory Committee

AGENCY: Office of Justice Programs, Office of the Assistant Attorney General, Justice.

ACTION: Notice of meeting.

SUMMARY: Announcement of a meeting of the Global Justice Information Network Advisory Committee to discuss the Global Initiative, as described in Initiative A07 "Access America: Re-Engineering Through Information Technology."

DATES: The meeting will take place on Wednesday, October 18, 2000, from 9:00 a.m. to 5:00 p.m. ET.

ADDRESSES: The meeting will take place at the Hotel Washington, Ballroom, 515 15th Street, NW., Washington, DC 20004; Phone: (202) 638-5900.

FOR FURTHER INFORMATION CONTACT: To register to attend the meeting, please contact Karen Sublett, Global Network Coordinator, Office of the Assistant

Attorney General, Office of Justice Programs, 810 7th Street NW., Suite 6400, Washington, DC 20531; Phone: (202) 616-3463. [This is not a toll-free number]. Anyone requiring special accommodations should contact Ms. Sublett at least seven (7) days in advance of the meeting.

SUPPLEMENTARY INFORMATION:

Authority

The Global Justice Information Network Advisory Committee was established pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), as amended.

Purpose

The Global Justice Information Network Advisory Committee (GAC) will act as the focal point for justice information systems integration activities in order to facilitate the coordination of technical, funding, and legislative strategies in support of the Administration's justice priorities.

The GAC will guide and monitor the development of the Global concept. It will advise the Attorney General, the President (through the Attorney General), and local, state, tribal, and federal policymakers in the executive, legislative, and judicial branches and advocate for strategies for accomplishing a Global Network capability.

The Committee will meet to address the Global Initiative, as described in Initiative A07 "Access America: Re-Engineering Through Information Technology". This meeting will be open to the public, and registrations will then be accepted on a space available basis. Interested persons whose registrations have been accepted may be permitted to participation in discussions at the discretion of the meeting chairman and with the approval of the Designated Federal Employee (DFE). Further Information about this meeting can be obtained from Karen Sublett, DFE, at (202) 616-3463.

Dated: September 27, 2000.

Karen Sublett,

Global Network Coordinator, Office of the Assistant Attorney General, Office of Justice Programs.

[FR Doc. 00-25281 Filed 10-2-00; 8:45 am]

BILLING CODE 4410-18-P

DEPARTMENT OF LABOR

Employment and Training Administration

Workforce Investment Act: Migrant and Seasonal Farmworker Programs Under Section 167

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of proposed data collection.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation process to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This process helps to ensure that requested data can be provided in the desired format, reporting burdens are minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration (ETA), in consultation with the Migrant and Seasonal Farmworker Employment and Training Advisory Committee, is soliciting comments concerning the proposed institution of a "reporting and performance standards system for National Farmworker Jobs Programs under title I, section 167 of the Workforce Investment Act (WIA)". A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the address section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before December 4, 2000.

ADDRESSES: Alicia Fernandez-Mott, Chief, Division of Seasonal Farmworker Programs, Employment and Training Administration, U.S. Department of Labor, Room N-4641, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: (202) 219-8502 ext 121 (VOICE) or (202) 219-6338 (FAX) (these are not toll-free numbers) or INTERNET: afernandezmott@doleta.gov.

FOR FURTHER INFORMATION CONTACT:

Copies of the information collection request are available for inspection in the Division of Seasonal Farmworker Programs at the above address, and will be mailed to persons who request copies in writing from Alicia Fernandez-Mott at the above address.

SUPPLEMENTARY INFORMATION:**I. Background**

The Employment and Training Administration of the Department of Labor, in consultation with the Migrant and Seasonal Farmworker Employment and Training Advisory Committee, is requesting approval of a new reporting and performance standards system for Workforce Investment Act (WIA) title I, section 167, National Farmworker Jobs Program grantees for three program years (July 1, 2000 to June 30, 2003). In evaluating the last several years' reporting experience of the grantees who received funding under JTPA section 402, and in light of the statutory requirements of WIA applicable to section 167 grantees, the Department has developed the following recommended planning and reporting requirements which it believes supports the statutory requirements under WIA as they relate to the National Farmworker Jobs Program.

II. Desired Focus of Comments

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's burden estimate for the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Action

This proposed ICR will be used by approximately 53 Workforce Investment Act (WIA) section 167 grantees as the primary reporting and performance measurement vehicle for enrolled individuals, their characteristics, training and services provided, outcomes, including job placement and employability enhancements, as well as detailed financial data on program expenditures.

Type of Review: New.

Agency: Employment and Training Administration.

Title: Planning, reporting, and performance system for WIA title I, section 167, National Farmworker Jobs Program grantees.

OMB Number: 1205-0NEW.

Catalog of Federal Domestic

Assistance Number: 17.255 (this would replace similar Migrant and Seasonal Farmworker employment and training activities conducted under section 402 of the Job Training Partnership Act).

Record Keeping: Grantees shall retain supporting and other documents necessary for the compilation and submission of the subject reports for three years after submission of the final financial report for the grant in question [29 CFR 97.42 and/or 29 CFR 95.53]

Affected Public: State agencies; private, non-profit corporations; and consortia of any of the above.

Cite/Reference/Form/etc.: The collection instrument is the National Farmworker Jobs Program Planning, Reporting, and Performance System and related instructions. OMB-approved forms will be provided for use in gathering information at the grantee field office level.

Total Respondents: 53.

Frequency: Annually for planning information; quarterly for both financial information and participation and characteristics information.

Total Annual Responses: 42,833.

Planning—53 (53 times 1).

Reporting—424 (53 times 4, times 2).

Recordkeeping (NFJP SPIR)—42,250 records.

There are four statutorily-required quarterly financial status reports per grantee per year, by year of appropriation. For participation and characteristics information, there are four quarterly submissions per year, regardless of the year(s) of funding expended during the program year. There is only one format for the participation and characteristics report.

Average Time per Response:

Annual Service Plan (Narrative)—20 hours.

Budget Information Summary (BIS)—15 hours; (ETA).

Program Planning Summary (PPS)—16 hours; (ETA).

Financial Status Report (FSR)—7 hours; (ETA).

Program Status Summary (PSS)—7 hours; (ETA).

Recordkeeping (SPIR)—3 hours (per participant record) The individual time per response varies widely depending on the degree of automation attained by individual grantees. Grantees also vary according to the numbers of individuals served in each program year. If the grantee has a fully-developed and automated MIS, the response time is

limited to one-time programming plus processing time for each response. It is the Department's desire to see as many WIA section 167 grantees as possible become computerized, so that response time for reporting will eventually sift down to an irreducible minimum with an absolute minimum of human intervention.

Estimated Total Burden Hours:

132,601 (NFJP—minimum)—42,833 total responses.

Planning Narrative (NFJP)—53 responses times 20 hours per response equals 1,060 burden hours.

BIS (NFJP)—53 responses times 15 hours per response equals 795 burden hours.

PPS (NFJP)—53 responses times 16 hours per response equals 848 burden hours.

FSR (NFJP)—212 (53 X 4) responses times 7 hours per response equals 1,484 burden hours.

PSS (NFJP)—212 (53 X 4) responses times 7 hours per response equals 1,484 burden hours.

Participant Records—42,250 response (SPIR records) times 3 hours per response equals 126,750 burden hours.

The use of the term "minimum" refers to the fact that an individual grantee must continue to report on expenditures by year of appropriation until those funds are completely expended, or "zeroed out". Thus, if more than one year's appropriation is expended in a given quarter, two (or more) FSRs must be submitted for that period, corresponding to the fund source(s) utilized.

Total Burden Cost (capital/startup): \$—0—.

Total Burden Cost (operating/maintaining): \$1,989,015. (132,601 total hours per annual response cycle times an estimated average wage of \$15.00 per grantee staff hour). As noted, these costs will vary widely among grantees, from nearly no additional cost to some higher figure, depending on the state of automation attained by each grantee and the wages paid to the staff actually completing the various forms. All costs associated with the submission of these forms are allowable grant expenses.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 27th day of September, 2000.

James C. DeLuca,

Acting Director, Office of National Programs.

[FR Doc. 00-25353 Filed 10-2-00; 8:45 am]

BILLING CODE 4510-30-U

DEPARTMENT OF LABOR**Employment and Training
Administration****Unemployment Compensation Denied
Claims Accuracy: Proposed
Information Collection and Request for
Public Comment**

AGENCY: Employment and Training
Administration (ETA), Labor.

ACTION: Notice and request for
comments.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that the requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

ETA is soliciting comments concerning the proposed new collection of information on the accuracy of decisions to deny claims for unemployment compensation (UC). ETA is seeking Office of Management and Budget (OMB) approval under the PRA95 to establish Denied Claims Accuracy (DCA) as a component of the quality control (QC) program in the Federal-State unemployment insurance system (20 CFR Part 602). A copy of the proposed data collection instrument is available on the ETA Office of Workforce Security (OWS) Web site, <http://workforcesecurity.doleta.gov/>, or can be obtained by contacting the office listed in the Addresses section below.

DATES: Written comments must be submitted to the office listed in the Addresses section below on or before December 4, 2000.

ADDRESSES: All comments about this proposed collection of information should be addressed to: Andrew W. Spisak, Office of Workforce Security, Employment and Training Administration, U.S. Department of Labor, Room S-4231, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Andrew W. Spisak, telephone: 202-219-5223, ext. 157 (this is not a toll-free

number); fax: 202-219-8506; e-mail: aspisak@doleta.gov.

SUPPLEMENTARY INFORMATION:**I. Background**

Since 1987, all State Employment Security Agencies (SESA's), except the Virgin Islands, have been required by regulation at 20 CFR Part 602 to operate a quality control program to assess the accuracy of benefit payments in three programs: State Unemployment Insurance (UI), Unemployment Compensation for Federal Employees (UCFE), and Unemployment Compensation for Ex-Servicemembers (UCX). This program, implemented under the Department's authority at Sections 303(a)(1) and 303(b)(1) of the Social Security Act, was initially called Benefits Quality Control but was renamed Benefit Accuracy Measurement (BAM) in 1996.

The BAM methodology requires each State to draw weekly samples of UC payments. Minimum annual samples are set at 360 cases in the ten States with the smallest volume of UC claims and 480 cases in all other States. A specially trained staff of investigators reviews agency records and contacts the claimant, employer(s) and third parties to verify all the information in agency records and obtain additional information pertinent to the benefit amount for the sampled week. States have the flexibility to verify the UC payment information by telephone, mail, e-mail or fax, as they deem appropriate.

Using the new and verified information, the investigators determine what the benefit payment should have been to accord fully with State law. Differences between the actual and reconstructed payments are coded as underpayment or overpayment errors, and data on payment error type (for example, fraud, nonfraud, technically proper), cause, and responsible party are recorded in electronic databases in each State and in the Department of Labor National Office in Washington, D.C. The SESA's and the Department use this information to estimate payment accuracy rates, monitor program quality, guide possible future program improvements, inform system stakeholders, and perform various analyses. The program is operated under OMB approval, OMB number 1205-0245; approval expires October 31, 2002.

During the public consultation process which preceded the establishment of the QC/BAM program, several public interest groups representing employers, employees, and

State government agencies proposed underlying principles to govern the program. The Department adopted these consensus principles in Unemployment Insurance Program Letter (UIPL) No. 4-86 (December 20, 1985).

In the final rule establishing the QC program for UC, published in the **Federal Register** (FR) at 52 FR 33520 (September 3, 1987), one of the consensus principles states that QC would be expanded to include the review/investigation of claims that had been denied [52 FR 33522].

In addition, 20 CFR 602.2 states that:

Other elements of the QC program (*e.g.*, interstate, extended benefits programs, benefit denials, and revenue collections) will be phased in under a schedule determined by the Department in consultation with State agencies.

States determine claimant eligibility for UC in three broad areas: monetary determinations, separation determinations, and nonseparation determinations. Monetary determinations are made when a claim is initially filed (or when a claim is made to establish a new benefit year) to verify that the claimant has sufficient wage credits in the base period and has satisfied other monetary requirements to demonstrate attachment to the labor force.

Separation determinations are made when the claim is initially filed or when an additional claim is filed in the claimant's benefit year after a period of intervening employment. Separation determinations evaluate whether the claimant's unemployment is involuntary and through no fault of the claimant.

Nonseparation determinations verify that the claimant is meeting the eligibility requirements of State law for a specific week of unemployment.

In 1986-87, five States conducted a one-year pilot to measure the accuracy of decisions to deny UC eligibility for monetary, separation, and nonseparation reasons. These States tested three sampling designs and used the BAM case investigation methodology. Although the pilot identified significant rates of error in the denial decisions that were investigated, national implementation of a program to measure the accuracy of denied claims was deferred because of resource constraints and other program priorities, such as the implementation of Benefit Timeliness and Quality and the Tax Performance System. Since the 1986-87 denied claims pilot, several groups, including organized labor, employee rights legal support groups, the Department of Labor's Office of

Inspector General, and the Vice President's National Performance Review have urged the Department to measure the accuracy of decisions that deny UC benefit claims.

In 1995 the Performance Enhancement Work Group (PEWG), which consisted of senior SESA managers and Federal staff, recommended several changes in the way UC operational performance was measured and improved. The Department accepted most of the recommendations and has implemented them as UI PERFORMS. UIPL No. 41-95 (August 24, 1995) describes in detail the UI PERFORMS performance management system. Among the PEWG recommendations with respect to BAM were: (1) The implementation of a system to measure the accuracy of decisions to deny UC claims; (2) reductions in the BAM paid claims sample allocations; and (3) a modification of data collection methods to provide the States more flexibility in using program resources, which would be redirected to support UI PERFORMS continuous improvement activities, including investigating the accuracy of denied claims.

UIPL No. 15-96 (April 2, 1996) described the proposed changes and solicited comments from the SESA's. According to the Attachment to the UIPL, "Measuring UI Benefit Payment

Accuracy Under UI PERFORMS: Proposed Changes to Benefits QC":

Under the proposal, staff freed up because of sample reductions or changes in how verifications are conducted will be available for investigating denied claims and other UI Performs [sic] activities, including taking other performance measurements.

The implementation of the changes and the reallocation of BAM resources were reported in UIPL No. 3-97 (November 20, 1996).

Because significant time had elapsed since the initial denied claims pilot, the Department conducted a new pilot to guide implementation of DCA. The principal objectives of the pilot were:

- To test the operational feasibility of applying the BAM paid claims investigation methodology to denied UC claims, including both intrastate and interstate claims; and
- To evaluate whether the accuracy of decisions to deny UC claims for separation or nonseparation eligibility reasons is adequately addressed through the quarterly reviews of nonmonetary determination quality (ET Handbook 301) or whether the accuracy of these nonmonetary determinations can be measured only through the more comprehensive BAM fact-finding process.

Five States (Nebraska, New Jersey, South Carolina, West Virginia, and Wisconsin) participated in this new pilot. Sampling and investigation of

denied UC claims were conducted from September 1997 through September 1998. A final pilot evaluation report was issued in May 1999 and is available on the OWS Web site at: <http://workforcesecurity.doleta.gov>.

The five States that participated in the new pilot demonstrated that the BAM case investigation methodology was easy to implement for both intrastate and interstate claims, was successful in detecting erroneously denied claims, and identified valuable information on the cause, responsible party, point of detection, and prior agency action for improperly denied claims that SESA's could use to improve UC operations. The new pilot also demonstrated that the results of the quarterly evaluations of nonmonetary determination quality are not a reliable predictor of the accuracy of decisions to deny claims for UC. Because of the fundamental differences in the methodologies used in BAM and the nonmonetary quality review, both programs contribute important but distinct information within UI PERFORMS.

In general, the new pilot confirmed the results of the initial pilot that significant percentages of UC claims in all three eligibility areas (monetary, separation, and nonseparation) were incorrectly denied, although accuracy rates varied both among States and among the three eligibility areas. These results are summarized in Table 1.

TABLE 1.—PERCENTAGE OF CLAIMS ERRONEOUSLY DENIED BY TYPE OF DETERMINATION—1997-98 DENIALS PILOT

State	Monetary (pct.)	Separation (pct.)	Nonseparation (pct.)
Nebraska	10.1 (9.6)	4.0 (3.5)	14.0 (13.5)
New Jersey	12.6 (8.2)	11.3 (6.2)	14.4 (11.8)
South Carolina	23.4 (16.2)	5.0 (3.0)	18.5 (17.0)
West Virginia	15.1 (13.5)	3.4 (2.9)	6.8 (5.8)
Wisconsin	18.2 (9.4)	19.7 (16.3)	21.7 (16.3)
1997-98 Pilot Average	16.0 (11.2)	8.7 (6.4)	15.0 (12.9)
1986-87 Pilot Average	23	15	14

Note: The first percentage in each column is the unadjusted percentage of erroneous denials. The second percentage, in parentheses, is adjusted for appeals, redeterminations, and cases which the agency was in the process of resolving.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

III. Current Actions

The Department of Labor proposes the following methodology and operational characteristics of DCA:

Sample Design and Sample Sizes: Each week, States will select systematic random samples from three separate sampling frames constructed from the universes of claims for UC for which eligibility was denied for monetary, separation, or nonseparation reasons. States will use the BAM population edit and sample selection software program, which was distributed to all SESA's in January 1998, to select the weekly samples. This software uses a systematic random sampling algorithm. The

Department will distribute a table of random start numbers to use with the BAM/DCA sample selection program.

States will sample a minimum of 150 cases of each type of denial in each calendar year. Unlike BAM paid claims accuracy, in which the ten States with the smallest workloads sample paid claims at the reduced level of 360 cases per year, all States are allocated the same number of DCA cases. The Department considers the annual sample allocation of 150 cases for each

of the three types of denials to be the minimum sample size required to produce DCA rate estimates with acceptable precision and to yield a sufficient number of error cases to produce program improvement information. The proposed DCA sample allocations also take into account the likelihood of DCA claimant response rates less than 100 percent. This will result in fewer sample cases than the allocated levels that will be available to estimate accuracy rates and to provide

information on error causes, responsibility, and other information that can be used for program improvement.

Table 2 shows the precision, as measured by 95 percent confidence intervals, and the number of sample cases expected to be in error by various error rates for the proposed DCA sample size and the current BAM paid claims sample allocations.

TABLE 2.—95 PERCENT CONFIDENCE INTERVALS AND EXPECTED NUMBER OF ERROR CASES BY ANNUAL SAMPLE SIZE

Error rate (%)	Denied claims accuracy		Benefit accuracy measurement			
	Sample=150		Sample=360		Sample=480	
	95 pct. C.I. (+/-)	Expected error cases *	95 pct. C.I. (+/-)	Expected error cases *	95 pct. C.I. (+/-)	Expected error cases *
5	3.5	8	2.3	18	2.0	24
10	4.8	15	3.1	36	2.7	48
15	5.7	23	3.7	54	3.2	72
20	6.4	30	4.1	72	3.6	96
25	6.9	38	4.5	90	3.9	120
30	7.3	45	4.7	108	4.1	144
35	7.6	53	4.9	126	4.3	168
40	7.8	60	5.1	144	4.4	192
45	8.0	68	5.1	162	4.5	216
50	8.0	75	5.2	180	4.5	240

* Rounded to the nearest integer.

Note: Confidence intervals are expressed as the number of percentage points +/- for the estimated error rate. Example: For an estimated error rate of 20% and an annual sample size of 150, the 95 percent confidence interval is 20.0% + 6.4 (13.6%-26.4%).

The sampling errors in States with relatively small populations of denied

claims will be slightly lower, due to the higher percentage of the population that is sampled.

Table 3 shows the 95 percent confidence intervals for several error rates and sampling fractions, for a sample size of 150 cases. Based on CY 1999 data, a sample of 150 denials

exceeds 10 percent of the population of monetary denials in eight States; and exceeds 10 percent of the population of separation denials in one State. Sampling fractions for populations of nonseparation denials are less than 10 percent in all States.

TABLE 3.—95 PERCENT CONFIDENCE INTERVALS BY ERROR RATE AND PERCENTAGE OF POPULATION SAMPLED
[Sample size=150 cases]

Percent of population sampled	Error rate (percent)				
	5	10	15	20	25
1	3.5	4.8	5.7	6.4	6.9
2	3.5	4.8	5.7	6.3	6.9
3	3.4	4.7	5.6	6.3	6.8
4	3.4	4.7	5.6	6.3	6.8
5	3.4	4.7	5.6	6.2	6.8
10	3.3	4.6	5.4	6.1	6.6
15	3.2	4.4	5.3	5.9	6.4
20	3.1	4.3	5.1	5.7	6.2
25	3.0	4.2	4.9	5.5	6.0

Scope: Denied intrastate and interstate claims in the State UI, UCFE, and UCX programs will be included in DCA. In addition, interstate claims in the UI, UCFE, and UCX programs will be included in the BAM paid claims sampling frames, effective with the implementation of DCA. Paid and denied interstate claims will be

included in the sampling frames of the interstate liable State.

Operational Definitions of Sampling Frames: Unless otherwise stated, definitions refer to those used in ET Handbook 401, 3rd edition. ETA report cell references are those used in ET Handbook 402, 4th edition.

(1) Monetary Denials

Include all initial claims that meet the definition for inclusion in the ETA 5159 Claims and Activities report on lines 101 (State UI), 102 (UCFE, No UI), and 103 (UCX only), for item 2 (new intrastate, excluding transitional), item 6 (transitional), and item 7 (interstate

received as liable State) and for which eligibility was denied because of:

- Insufficient wages,
- Insufficient hours/weeks/days,
- Failure of high quarter wage test,
- Transitional wage requirement, or
- Other State monetary eligibility requirement.

Exclude denied claims made under the Short Time Compensation (STC) (Workshare), Extended Benefits (EB), Trade Readjustment Allowance (TRA), Disaster Unemployment Assistance (DUA), or any temporary Federal-State supplemental compensation programs.

(2) Separation Denials

Include all separation determinations that meet the definition for inclusion in the ETA 9052 Nonmonetary Determinations Time Lapse (Detection Date) report in cells c1 (intrastate), c5 (interstate), and c193 (multi-claimant) and for which eligibility was denied based on any of the following issues:

- Lack of work (for example, reduction in force, temporary lay off),
- Voluntary quit,
- Discharge,
- Labor dispute,
- Military, or
- Job attachment (claimant not separated, including leave of absence).

Exclude denied claims made under the STC, EB, TRA, DUA, or any temporary Federal-State supplemental compensation programs.

(3) Nonmonetary-Nonseparation Denials

Include all nonmonetary-nonseparation determinations that meet the definition for inclusion in the ETA 9052 Nonmonetary Determinations Time Lapse (Detection Date) report in cells c97 (intrastate), c101 (interstate), and c193 (multiclient) and for which eligibility was denied based on any of the following issues:

- Able and/or available to work,
- Actively seeking work,
- Disqualifying/unreported income,
- Refusal of suitable work,
- Failure to apply for or accept referral,
- Failure to report,
- Failure to register with the employment service, or
- Other nonseparation eligibility issue (for example, alienstatus, athlete, school employee, seasonality, determination of UI status, removal of disqualification).

Exclude denied claims made under the STC, EB, TRA, DUA, or any temporary Federal-State supplemental compensation programs.

Frequency and Timing: State agencies will create a sampling frame file each week. The sampling frame includes all

decisions to deny UC claims issued during the period 12:00 a.m. Sunday to 11:59 p.m. Saturday. The date of the determination is the date that the notice of denial is mailed to the claimant, presented to the claimant in-person, or otherwise transmitted to the claimant by the State agency. If no notice is required, it is the date that the denial action was entered into the agency's record system, that a stop payment order was issued, or that an offset was applied.

In the 1997-98 DCA pilot, several claims for UC were sampled which were initially denied for insufficient wages but were subsequently determined to be monetarily eligible upon the addition of wages from out-of-State employers (combined wage claims) or Federal wages (UCFE and/or UCX programs). The exchange of information on UCFE and UCX wages is in the process of being automated and expedited. However, in order to allow time for States to request and receive Federal and combined wage credits, the sampling frame for monetary denials will be constructed two weeks after the week ending date of the initial claim. For example, for all new and transitional initial claims filed during the week ending June 10, 2000, the sampling frame will consist of claims for which the most recent determination as of June 24 denies monetary eligibility.

Case Investigation: All denied claims sample cases will be investigated using the BAM methodology, which is documented in ET Handbook 395. Investigators will review agency records and contact the claimant, employer(s), and all other relevant parties to verify information in agency records or obtain additional information pertinent to the decision to deny eligibility. Unlike the investigation of paid claims, in which all decisions affecting claimant eligibility that precede the compensated week selected for the sample are evaluated, the investigation of denied claims will be limited to the issue, or issues, upon which the denial decision was based. For example, if a continued week claim is denied because the agency determined the claimant was not available for work, then only the availability issue will be investigated; the monetary, separation and any prior nonmonetary determinations will not be investigated. Like the investigation of paid claims, States have the flexibility to conduct the investigation of denied claims for UC by in-person interview, telephone, mail or fax, as they deem appropriate.

Resources: When BAM paid claims sample sizes were reduced in

accordance with PEWG recommendations to the 480/360 levels in 1996 in preparation for DCA, State staff allocations were adjusted to provide sufficient resources to conduct BAM paid and denied claims accuracy, Benefit Timeliness and Quality, Tax Performance System, and UI PERFORMS continuous improvement activities. Two full-time equivalent (FTE) staff positions allocated to continuous improvement activities will support DCA. States will decide how to allocate/apportion among staff BAM paid and denied claims sample cases.

ADP Support: UIPL No. 1-98 (October 20, 1997) included the documentation for the revised BAM population edit and sample selection program, which was distributed to all SESA's in January 1998, and the specifications for programming required to construct the DCA sampling frame files, for which the SESA's are responsible. DCA applications software, which was developed for the DCA pilot, are installed on the State Sun Ultra 10 computers provided by the Department. Although this software is functional and can be used to conduct DCA, several modifications of and additions to this software have been identified and will be released to the States in advance of the national implementation of DCA. In addition, the BAM sample selection program will be modified to include paid interstate claims in the BAM samples and to reflect revisions that were identified in the DCA pilot, such as the two-week lag in sampling monetary denials. States will have to recompile the revised COBOL program on their ADP system.

Data Recording and Reports: States will record the results of their investigations using a standard data collection instrument and suite of software supplied by the Department. The Department will collect this information from the State databases, store the data in a database in the National Office in Washington, D.C., and produce annual statistics on the accuracy rates for each of the three types of denied claims by State.

Training: The Department will conduct DCA training for State staff during the calendar quarter preceding national implementation. The Department will issue a directive containing details on the times, locations, and content of the training in advance of the sessions.

Type of Review: New.

Agency: Employment and Training Administration.

Title: Unemployment Compensation Denied Claims Accuracy.

Record keeping: States are required to follow their State laws regarding public record retention in retaining BAM paid and denied claims records.

Affected Public: Individuals; Businesses; Other for-profit/not-for-profit organizations; Farms; Federal, State, Local, and Tribal Governmental entities.

Frequency: Weekly.

Total Respondents: 1,395 per week (includes claimants, employers, third parties, and SESA BAM/DCA staff).

Total Responses: 72,540 per year (52 State Agencies/1,395 per State; includes claimants, employers, third parties, and SESA DCA staff).

Estimated Time Per Response: Claimant—0.5 hours; Employers and Third Parties—0.5 hours; SESA BAM/DCA staff—6.67 hours.

Total Burden Hours: 180,375 hours.

Total Burden Cost (capital/startup): \$1,014,000 (52 State Agencies/\$19,500 per State).

Total Burden Cost (operating/maintaining): \$4,264,000 (annual) (approximately \$82,000 per State).

Comments submitted in response to this request will be summarized and/or included in the request for OMB approval of the information collection request; they will also become a matter of public record.

Signed in Washington, D.C., on September 26, 2000.

Grace A. Kilbane,

Administrator, Office of Workforce Security.
[FR Doc. 00-25354 Filed 10-2-00; 8:45 am]

BILLING CODE 4510-30-U

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (P.L. 95-541)

AGENCY: National Science Foundation.

ACTION: Notice of Permit Modification Received under the Antarctic Conservation Act of 1978, P.L. 95-541.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of requests to modify permits issued to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of a requested permit modification.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application on or before November 2, 2000. Permit applications may be

inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy at the above address or (703) 292-7405.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Public Law 95-541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States citizens. The Agreed Measures, developed by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest.

DESCRIPTION OF PERMIT MODIFICATION REQUESTED: The Foundation issued a permit (2000-004) to Dr. Paul J. Ponganis on September 21, 1999. The issued permit allows the applicant to capture up to 60 Emperor adults and 55 Emperor chicks for collection of samples and application of various depth recorders, physiological recorders or video cameras to study the thermoregulation and underwater behavior of Emperor penguins.

The applicant proposes to access the Cape Crozier Antarctic Specially Protected Area #124 to census Emperor penguin chicks.

LOCATION: ASPA 124—Cape Crozier, Ross Island.

Dates: November 15, 2000 to February 28, 2002.

Nadene G. Kennedy,

Permit Officer, Office of Polar Programs.

[FR Doc. 00-25380 Filed 10-2-00; 8:45 am]

BILLING CODE 7555-01-P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Application Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of Permit Applications Received Under the Antarctic Conservation Act.

SUMMARY: Notice is hereby given that the National Science Foundation (NSF)

has received a waste management permit application for operation of a remote field support and emergency provisions for the Expedition Vessel, Kapitan Dranitsyn for the 2000-2001 season and four following austral summers. The application is submitted to NSF pursuant to regulations issued under the Antarctic Conservation Act of 1978.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application on or before November 2, 2000. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Joyce A. Jatko or Nadene Kennedy at the above address or (703) 292-8030.

SUPPLEMENTARY INFORMATION: NSF's Antarctic Waste Regulation, 45 CFR Part 671, requires all U.S. citizens and entities to obtain a permit for the use or release of a designated pollutant in Antarctica, and for the release of waste in Antarctica. NSF has received a permit application under this Regulation for operation of up to nine expeditions per year to Antarctica. During each trip, passengers are taken ashore at selected sites by Zodiac (rubber raft) or helicopter for approximately two to four hours at a time. On each helicopters landing, emergency gear would be taken ashore in case weather deteriorates and passengers are required to camp on shore. Anything taken ashore will be removed from Antarctica and disposed of in Ushuaia, Argentina, Port Stanley, Falkland Islands, or a substitute port of disembarkation. No hazardous domestic products or wastes (aerosol cans, paints, solvents, etc.) will be brought ashore. Cooking stoves/fuel will be used only in an emergency were passengers are forced to spend night on shore.

Conditions of the permit would include requirements to report on the removal of materials and any accidental releases, and management of all waste, including human waste, in accordance with Antarctic waste regulations.

Applications for the permit is made by: Lars Winkander, Quark Expeditions, Inc., 980 Post Road, Darien, CT 06820.

LOCATION: Antarctic Peninsula Area.

Dated: November 23, 2000 to March 31, 2005.

Nadene G. Kennedy,
Permit Officer.

[FR Doc. 00-25381 Filed 10-2-00; 8:45 am]

BILLING CODE 7555-01-P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Application Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of Permit Applications Received Under the Antarctic Conservation Act.

SUMMARY: Notice is hereby given that the National Science Foundation (NSF) has received a waste management permit application for a two-person team to traverse the Antarctic continent on skis. The application is submitted to NSF pursuant to regulations issued under the Antarctic Conservation Act of 1978.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by October 24, 2000. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Joyce A. Jatko or Nadene Kennedy at the above address or (703) 292-8030.

SUPPLEMENTARY INFORMATION: NSF's Antarctic Waste Regulation, 45 CFR Part 671, requires all U.S. citizens and entities to obtain a permit for the use or release of a designated pollutant in Antarctica, and for the release of waste in Antarctica. NSF has received a permit application under this Regulation for the operation of a two-woman private expedition to traverse the antarctic continent on skis, using parasails, where possible. The permit applicant is: The Bancroft Arnesen Expedition, c/o Base Camp Promotions, LLC, 119 North Fourth Street, Suite 406, Minneapolis, MN 55104. The proposed duration of the permit is from October 25, 2000 through March 15, 2001.

Activity for Which a Permit Is Requested

The two-female expedition team plans to fly from Cape Town, South Africa to Blue One Runway in the Patriot Hills. From there they will be flown to by twin otter to the Fimbul Ice Shelf, from

whence they commence their skiing expedition to the South Pole and across the continent to McMurdo Sound. They plan to ski across the continent hauling a sledge each that contains equipment, food and fuel. The fuel will be used to cook food on a one-burner Primas stove, burning white gas. Any spills will be contained and cleaned up. The team's computers and communication devices are battery powered and recharged by solar collectors carried on the sledge. Any solid waste generated will be removed from Antarctica at the conclusion of the expedition. Conditions of the permit would include requirements to report on the removal of materials and any accidental releases, and management of all waste, including human waste, in accordance with Antarctic waste regulations.

Nadene G. Kennedy,
Permit Officer.

[FR Doc. 00-25379 Filed 10-2-00; 8:45 am]

BILLING CODE 7555-01-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72-3]

Carolina Power & Light Company, H.B. Robinson Independent Spent Fuel Storage Installation; Notice of Docketing of Materials License SNM-2502 Amendment Application

By letter dated August 28, 2000, Carolina Power and Light Company (CP&L) submitted an application to the Nuclear Regulatory Commission (NRC or the Commission), in accordance with 10 CFR part 72, requesting the amendment of the H. B. Robinson (HBR) independent spent fuel storage installation (ISFSI) license (SNM-2502) and the Technical Specifications for the ISFSI located at Darlington County, South Carolina. CP&L is seeking Commission approval to amend the materials license and the ISFSI Technical Specifications to revise the safeguards license condition and the Technical Specifications to reflect that the Industrial Security Plan and Safeguards Contingency Plan are combined into the Physical Security and Safeguards Contingency Plan. The revision would also clarify the text to indicate that the Training and Qualification Plan no longer contains safeguards information. Such an action would only change the reference to and the location of the Industrial Security Plan and the Safeguards Contingency Plan. The requested change does not affect the design, operation,

maintenance, or surveillance of the ISFSI.

This application was docketed under 10 CFR part 72; the ISFSI Docket No. is 72-3 and will remain the same for this action. The amendment of an ISFSI license is subject to the Commission's approval.

The Director, Office of Nuclear Material Safety and Safeguards, or his designee, will determine if the amendment presents a genuine issue as to whether public health and safety will be significantly affected and may issue either a notice of hearing or a notice of proposed action and opportunity for hearing in accordance with 10 CFR 72.46(b)(1) or take immediate action on the amendment in accordance with 10 CFR 72.46(b)(2).

For further details with respect to this application, see the application dated August 28, 2000, which is available for public inspection at the Commission's Public Document Room, One White Flint North Building, 11555 Rockville Pike, Rockville, MD or from the publicly available records component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/NRC/ADAMS/index.html> (the Public Electronic Reading Room).

Dated at Rockville, Maryland, this 27th day of September 2000.

For the Nuclear Regulatory Commission.
Susan F. Shankman,
Acting Director, Spent Fuel Project Office,
Office of Nuclear Material Safety and Safeguards.

[FR Doc. 00-25376 Filed 10-2-00; 8:45 am]

BILLING CODE 7590-01-P

OFFICE OF MANAGEMENT AND BUDGET

Public Availability of Year 2000 Agency Inventories Under the Federal Activities Inventory Reform Act of 1998 (Public Law 105-270) ("FAIR Act")

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Notice of Public Availability of Commercial Activities Inventories.

SUMMARY: Year 2000 FAIR Act Commercial Activities Inventories are now available to the public from the agencies listed below. The Office of Federal Procurement Policy has prepared and is making available a summary FAIR Act User's Guide through its Internet site: <http://www.whitehouse.gov/OMB/procurement/index.html>. This User's Guide will help interested parties

review Year 2000 FAIR Act inventories, and will also include the web-site addresses to access agency inventories.

The "Federal Activities Inventory Reform Act of 1998" (Public Law 105-270) ("FAIR Act") requires that OMB publish an announcement of public availability of agency Commercial

Activities Inventories upon completion of OMB's review and consultation process concerning the content of the agencies' inventory submissions. OMB has completed this process for the agencies listed below. Further announcements will be published as

OMB and the agencies complete their review and consultation process.

The attached Commercial Activities Inventories are now available.

Jacob J. Lew,
Director.

Attachment

Agency	Contact
Advisory Council on Historic Preservation	Carol McLain, 202-606-8511, Website: www.Achp.gov . More information contact: Sharon Conway, 202-606-8648, For challenges and appeals contact: Carol McLain.
Broadcasting Board of Governors	Dennis Sokol, 202-619-3988, Website: www.ibt.gov/fairact , Can provide hard copy if needed.
Chemical Safety Board	Phyllis Thompson, 202-261-7600, Website: www.csb.gov . More information contact: Faye Gibbons 202-261-7600.
Environmental Protection Agency	George Ames, 202-564-4998, Website: www.epa.gov/efinpage (Whats News).
Environmental Protection Agency	John Jones, 202-260-3137, Website: www.epa.gov/oigearth .
Equal Employment Opportunity Commission	Allan fisher, 202-663-4200 More information contact: George Betters, 202-663-4266, For Challenges and Appeals contact: George Betters and legal counsel.
Federal Labor Relations Authority	Harold D. Kessler, 202-482-6690 ext. 440, Website: www.flra.gov .
Federal Mediation and Conciliation Service	George Buckingham 202-606-8100, Website: www.fmcs.gov .
Federal Mine Safety and Health Review Commission	Richard Baker, 202-653-5625, Website: www.fmshrc.gov .
Holocaust Memorial Council and Museum	Jay Gaglione, 202-314-0336, Website: Ushmm.org .
Merit Systems Protection Board	Douglas Wade, 202-653-6772, Website: www.mspb.gov .
National Aeronautics and Space Administration	Timothy Sullivan, 202-358-2215, Website: www.HQ.NASA.gov/fair/ .
National Gallery of Art	Bill Roache, 202-842-6329, Website: www.nga.gov .
National Labor Relations Board	Harding Darden, 202-273-3970, Website: www.nlr.gov .
National Mediation Board	June King, 202-692-5010, Website: www.nmb.gov .
National Science Foundation	Gary Scavongelli, 703-292-8102, Website: www.nsf.gov/cgi-bin/getpub?od001 .
Occupational Safety & Health Review Commission	Ledia Bernal, 202-606-5390, Website: www.oshrc.gov .
Office of Federal Housing Enterprise Oversight	Linda Gwinn, 202-414-3789, Website: www.ofago.gov .
Office of Government Ethics	Sean Donohue, 202-208-8000, ext. 1217, Website: www.usoge.gov .
Office of Management and Budget	Brian Gillis, 202-395-7250, Website: www.whitehouse.gov/OMB/procrement .
Office of National Drug Control Policy	Tilman Dean, 202-395-6722, Website: www.whitehousedrugpolicy.org . More information contact: Tilman Dean and General Counsel.
Office of Personnel Management	Kenneth McMahon, 202-606-2494, Website: www.opm.gov/procure .
Office of Science & Technology Policy	Barbara Ferguson, 202-456-6001, Website: www.ostp.gov (Inside OSTP).
Office of the Special Counsel	Jane McFarland, 202-653-9001, Website: www.ics.si.edu .
Department of Veterans Affairs	John O'Hara, 202-273-5068, Website: www.va.gov e-mail: fairact@mail.va.gov , fax: 202-273-5991.
Woodrow Wilson Center	Ms. Ronnie Dempsey, 202-691-4216.

[FR Doc. 00-25344 Filed 10-2-00; 8:45 am]

BILLING CODE 3110-01-P

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (AMRESO, INC., 10% Senior Subordinated Notes Due 2003 and 10% Senior Subordinated Notes Due 2004) File No. 1-11599

September 26, 2000.

AMRESO, INC., a Delaware corporation ("Company"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934

("Act")¹ and Rule 12d2-2(d) thereunder,² to withdraw its 10% Senior Subordinated Notes due 2003 and its 10% Senior Subordinated Notes due 2004 (collectively, the "Securities") from listing and registration on the New York Stock Exchange, Inc. ("NYSE")³

In making the decision to withdraw the Securities from listing and registration at this time, the Company has cited the limited number of registered holders of the Securities. The Company also notes that it is not obligated under the indenture under

which the Securities were issued or under any other documents to maintain the Securities' listing on the NYSE or any other exchange. The Company believes that the delisting of the Securities should not have a material impact on the holders of the Securities. The Company has stated that it will use reasonable efforts to obtain market makers for the Securities.

Additionally, the Company notes that its Common Stock, \$.05 par value, is currently and shall remain registered pursuant to section 12(g) of the Act.⁴ Accordingly, the company's obligation to file reports with the commission pursuant to section 13 of the Act⁵ will remain after the proposed withdrawal of

¹ 15 U.S.C. 78l(d).

² 17 CFR 240.12d2-2(d).

³ Notice of this application was previously issued by the Commission as Securities Exchange Act Release No. 43267 on September 8, 2000. Such notice, however, failed to appear in the **Federal Register**, as required, and so is being reissued.

⁴ 15 U.S.C. 78l(g).

⁵ 15 U.S.C. 78m.

the Securities from listing and registration on the NYSE.

The Company has stated in its application to the Commission that it has complied with the requirements of NYSE Rule 500, which governs an issuer's voluntary withdrawal of securities from listing on the NYSE.

Any interested person may, on or before October 18, 2000, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609, facts bearing upon whether the application has been made in accordance with the rules of Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁶

Jonathan G. Katz,
Secretary.

[FR Doc. 00-25334 Filed 10-2-00; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-27236]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

September 26, 2000.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by October 20, 2000, to the Secretary, Securities and Exchange Commission, Washington, DC 20549-0609, and serve a copy on the relevant application(s) and/or declarant(s) at the address(es) specified below. Proof of service (by

affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After October 20, 2000, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

NiSource Inc., et al. (70-9681)

NiSource Inc. ("NiSource"), an Indiana corporation, and New NiSource, Inc. ("New NiSource"), a Delaware corporation, both located at 801 East 86th Avenue, Merrillville, Indiana 46410-6272, NiSource's wholly-owned public utility subsidiaries ("NiSource Utility Subsidiaries"), Northern Indiana Public Service Company ("Northern Indiana"), Kokomo Gas and Fuel Company ("Kokomo") and Northern Indiana Fuel and Light Company ("NIFL"), all located at 801 East 86th Avenue, Merrillville, Indiana 46410-6272, Bay State Gas Company ("Bay State") and Northern Utilities, Inc., both located at 300 Friberg Parkway, Westborough, Massachusetts 01581-5039, and Columbia Energy Group ("Columbia"), a registered holding company, located at 13880 Dulles Corner Lane, Herndon, Virginia 20171-4600, its five wholly-owned gas utility subsidiaries, Columbia Gas of Kentucky, Inc., Columbia Gas of Maryland, Inc., Columbia Gas of Ohio, Inc., Columbia Gas of Pennsylvania, Inc. and Columbia Gas of Virginia, Inc. (collectively, "Columbia Utility Subsidiaries" and together with NiSource Utility Subsidiaries, "Utility Subsidiaries"), all located at 200 Civic Center Drive, Columbus, Ohio 43215, and NiSource and Columbia's nonutility subsidiaries, EnergyUSA, Inc. ("Energy USA"), Primary Energy, Inc., NiSource Capital Markets, Inc., NiSource Finance Corp. ("NiSource Finance"), NiSource Pipeline Group, Inc., IWC Resources Corporation, NiSource Development Company, Inc., NI Energy Services, Inc., Hamilton Harbour Insurance Services, Ltd., and NiSource Corporate Services Company, all located at 801 East 86th Avenue, Merrillville, Indiana 46410-6272, Columbia Energy Group Service Corporation, Columbia LNG Corporation, Columbia Atlantic Trading Corporation, Columbia Energy Services Corporation, Columbia Energy Group Capital Corporation, Columbia Pipeline Corporation, Columbia Finance Corporation, and Columbia Electric Corporation, all located at 13880 Dulles Corner Lane, Herndon, Virginia 20171-

4600, Columbia Energy Resources, Inc., c/o 900 Pennsylvania Avenue, Charleston, West Virginia 25302, Columbia Gas Transmission Corporation and Columbia Transmission Communications Corporation, both located at 12801 Fair Lakes Parkway, Fairfax, Virginia 22030-0146, Columbia Gulf Transmission Company, located at 2603 Augusta, Suite 125, Houston, Texas 77057, Columbia Network Services Corporation, located at 1600 Dublin Road, Columbus, Ohio 43215-1082, Columbia Propane Corporation, located at 9200 Arboretum Parkway, Suite 140, Richmond, Virginia 23236, and Columbia Insurance Corporation, Ltd., located at 20 Parliament Street, P.O. Box HM 649, Hamilton HM CX, Bermuda ("Nonutility Subsidiaries" and together with NiSource Utility Subsidiaries and Columbia Utility Subsidiaries, "Subsidiaries") (collectively, "Applicants") have filed an application declaration under sections 6(a) 7, 9(a), 10, 12(b), 12(c), 13(b), 32 and 33 of the Act and rules 45, 46, 53, 54, 87, 90, 91, and 92 under the Act.

I. Background and Summary

NiSource and New NiSource have previously filed an application ("Merger Application")¹ seeking approvals required to complete the proposed acquisition by New NiSource of all of the issued and outstanding common stock ("Common Stock") of NiSource and Columbia. This would occur through mergers of separate subsidiaries of New NiSource with and into each of NiSource and Columbia, followed by the merger of NiSource into New NiSource. Upon consummation of these transactions, New NiSource would immediately be renamed "NiSource Inc." and would register as a holding company under section 5 of the Act. After the Merger, NiSource would own, directly or indirectly, all of the issued and outstanding Common Stock of the NiSource Utility Subsidiaries and the Columbia Utility Subsidiaries.

Upon completion of the Merger, NiSource would also hold, directly or indirectly, all of the Nonutility Subsidiaries and investments owned by NiSource, as well as those currently owned by Columbia. NiSource has proposed that it would maintain Columbia as a direct wholly-owned subsidiary after the Merger. The merger application contemplates that Columbia will remain a registered holding company, will in turn hold all of the

¹ The Commission issued a notice of the Merger Application in S.E.C. File No. 70-9551, Holding Co. Act Release No. 27226 (September 1, 2000).

⁶ 17 CFR 200.30-3(a)(1).

voting securities of the Columbia Utility Subsidiaries and its investments in other direct and indirect nonutility subsidiaries. Applicants expect that Columbia will continue to supply substantially all of the capital required by its subsidiaries.

Applicants now request authority with respect to the financing arrangements, ongoing financings and other matters pertaining to NiSource and its Subsidiaries after giving effect to the Merger.

In summary, Applicants request authority for the period through December 31, 2003 ("Authorization Period"), unless otherwise noted, for: (1) Maintenance of the facility under which the debt incurred to effect the acquisition ("Acquisition Debt") is issued, including any extensions, renewals or replacements, and the associated guarantees, during the Authorization Period; (2) issuance and sale of Common Stock and preferred stock ("Preferred Stock"), unsecured long-term indebtedness ("Long-Term Debt") and other forms of preferred or equity-linked securities having maturities of up to fifty years and not to exceed \$12 billion, with certain exceptions; (3) issuance and sale of short-term debt ("Short-Term Debt") in specified aggregate amounts for the NiSource Utility Subsidiaries not to exceed \$2 billion, with certain exceptions; (4) the Nonutility Subsidiaries to issue and sell debt and equity securities in order to finance their operations and future nonutility investments, provided that these future investments are exempt under the Act or rules under the Act or have been authorized in a separate proceeding; (5) the guarantee of indebtedness or contractual obligations or to provide other forms of credit support on behalf or for the benefit of the Subsidiaries in an aggregate principal or nominal amount not to exceed \$5 billion in addition to the amounts of guarantees and other forms of credit support that Columbia is currently authorized to issue; (6) guarantees of indebtedness or contractual obligations or provide other forms of credit support by Nonutility Subsidiaries (other than Columbia) for the benefit of other Nonutility Subsidiaries in an amount not to exceed \$2 billion; (7) entrance into hedging transactions ("Interest Rate Hedges") with respect to the indebtedness of NiSource and its subsidiaries, and entrance into hedging transactions ("Anticipatory Hedges") with respect to anticipatory debt issuances; (8) changing the terms of the authorized capitalization of any Subsidiary, provided that, if a Subsidiary is not

wholly-owned, all other required shareholder consents have been obtained for the change; (9) acquisition of the equity securities of one or more special-purpose financing subsidiaries ("Financing Subsidiaries"); (10) acquisition, directly or indirectly, of the equity securities of one or more intermediate subsidiaries ("Intermediate Subsidiaries") organized exclusively for the purpose of acquiring, financing, and holding the securities of one or more existing or future nonutility subsidiaries, including but not limited to "exempt wholesale generators" ("EWGs"), "foreign utility companies" ("FUCOs"), companies engaged or formed to engage in activities permitted by rule 58 ("Rule 58 Subsidiaries") or "exempt telecommunications companies" ("ETCs") as defined in sections 32, 33 and 34 of the Act, respectively; (11) exemption from the at-cost requirements of section 13(b) with respect to certain existing arrangements between certain NiSource utility and nonutility subsidiaries for a period of not more than one year after the merger; (12) for Nonutility Subsidiaries to sell goods and services to each other at other than cost, to the extent not exempt under rule 90(d), subject to certain exemptions; (13) engaging in certain categories of activities permitted outside the United States, subject to certain limitations; (14) Columbia to transfer proceeds of non-core assets sales to NiSource; (15) Nonutility Subsidiaries to pay dividends out of capital and unearned surplus to the extent permitted under applicable law and the terms of any credit arrangements to which they may be parties; Subsidiaries also seek to acquire, retire, or redeem the securities that they have issued to any associate company, any affiliate, or any affiliate of an associate company; and (16) a reservation of jurisdiction on the allocation of consolidated income tax liabilities among NiSource and its subsidiaries by agreement.

The proceeds from the financing would be used for general corporate purposes, including: (1) Refinancing of the Acquisition Debt; (2) financing, in part, investments by and capital expenditures of NiSource and its Subsidiaries (including equity contributions, advances and loans to Columbia); (3) funding of future investments in EWGs, FUCOs, and Rule 58 Subsidiaries; (4) the repayment, redemption, refunding or purchase by NiSource or any Subsidiary of any of its own securities; and (5) financing working capital requirements of NiSource and its Subsidiaries.

II. General Terms and Conditions of Financing

Applicants state that assuming that the holders of the maximum number of Columbia's shares elect to exchange their stock for NiSource Common Stock, and that certain non-core assets of NiSource and/or Columbia are sold before or shortly after the Merger, common equity as a percentage of NiSource's *pro forma* consolidated capitalization will be no less than 28.5%. In addition, NiSource commits that within two years after the date of the Commission's order approving the Merger, and for the remainder of the Authorization Period, the combined consolidated capitalization of the new holding company system would include no less than 30% common equity. NiSource also commits to maintain common equity of Columbia as a percentage of Columbia's consolidated capitalization at 30% or above throughout the Authorization Period, and also to maintain common equity as a percentage of capitalization of each of the NiSource Utility Subsidiaries at 30% or above throughout the Authorization Period.

The aggregate principal amount of all indebtedness issued by NiSource or any Financing Subsidiary of NiSource at any time outstanding (including, specifically, Acquisition Debt, Long-Term Debt and Short-Term Debt) would not exceed \$10 billion ("NiSource Debt Limitation"). The interest rate on Long-Term Debt, Preferred Stock or other preferred or income-linked securities would not exceed 500 basis points over the appropriate Treasury rate, and the interest rate on Short-Term Debt would not exceed 300 basis points over the London Interbank Offered Rate ("LIBOR"). Underwriting fees and all other fees and expenses incurred in consummating specific financing transactions would not exceed 5% of the proceeds.

III. Current Columbia and NiSource Financing Authority

A. Columbia

Columbia currently has financing authority derived from three orders (collectively, the "Columbia Financing Orders"). By order dated June 8, 1999,² Columbia has authority to issue and sell equity and Long-Term Debt securities in an amount not to exceed \$6 billion at any one time outstanding through December 31, 2003. In addition, Columbia is authorized to "enter into guarantee arrangements, obtain letters of

² S.E.C. File No. 70-9359, Holding Co. Act Release No. 27035 (June 8, 1999).

credit, and otherwise provide credit support" for its subsidiary companies in an amount not to exceed \$5 billion at any one time outstanding through December 31, 2003. By order dated December 22, 1997,³ Columbia has the authority to issue and sell Short-Term Debt securities in an amount not to exceed \$2 billion at any one time outstanding through December 31, 2003. Short-Term Debt may include borrowings under a revolving credit facility, the issuance of commercial paper, and bid notes to individual banks participating in the revolving credit facility. The order also authorizes four of the Columbia Utility Subsidiaries to make direct borrowings from Columbia.⁴ Columbia's Utility Subsidiaries and certain nonutility subsidiaries also may make short-term borrowings through the Columbia system money pool. Various restrictions on Columbia's current financing authority are set forth in an order dated December 23, 1996.⁵

Under the Columbia Financing Orders, the effective cost of money on debt may not exceed 300 basis points over comparable term U.S. treasury securities; and the effective cost of money on Preferred Stock and other Fix incomes securities may not exceed 500 basis points over 30-year term U.S. treasury securities. Bid notes must bear interest rates comparable to, or lower than, those available through other proposed forms of short-term borrowing with similar terms and have maturities not exceeding 270 days. The underwriting fees, commissions or other similar remuneration paid in connection with the non-competitive bid issue, sale or distribution of any securities may not exceed 5% of the principal or total amount of the financing.

Columbia is authorized under the Columbia Financing Orders to utilize the proceeds of authorized financing for general and corporate purposes including: (1) Financing, in part, of the capital expenditures of Columbia and its subsidiaries; (2) in the case of Short-Term Debt, financing gas storage inventories, other working capital requirements and capital spending of the Columbia system; (3) acquisition interests in EWGs and FUCOs; (4) the acquisition, retirement, or redemption of securities of which Columbia is an issuer without the need for prior Commission approval pursuant to rule

42 or a successor rule; and/or (5) the acquisition of the securities of nonutility companies as permitted under any rule of the Commission permitting these acquisitions.

Applicants are not requesting any changes to the amounts or types of securities and guarantees that Columbia and the Columbia Utility Subsidiaries are authorized to issue under the terms of the Columbia Financing Orders. Applicants request that any securities or guarantees issued by Columbia and the Columbia Utility Subsidiaries would not count against the proposed limits on financing contained in this application declaration. Columbia's Nonutility Subsidiaries request authority to pay dividends out of capital and unearned surplus to the extent permitted under applicable law and the terms of any credit arrangements to which they may be parties. Columbia Utility Subsidiaries also request the authority to acquire, retire, or redeem the securities that they have issued to any associate company, any affiliate, or any affiliate of an associate company.

Following the Merger Columbia would continue to provide capital required by its subsidiaries by issuing short-term and Long-Term Debt securities. NiSource proposes to make open account advances or cash capital contributions to Columbia, purchase additional shares of Columbia Common Stock and/or make loans, directly or through a Financing Subsidiary, evidenced by Columbia's promissory notes. The interest rate and maturity on any borrowings by Columbia from NiSource, or its Financing Subsidiary, would parallel the effective cost and maturity of a comparable debt security issued by the lender.

B. NiSource

In the Merger, New NiSource would issue approximately 124.2 million shares of Common Stock in exchange for the outstanding Common Stock of NiSource, based on the number of those shares outstanding on June 30, 2000, and assuming 30% of the outstanding Columbia shares are exchanged for Common Stock, approximately 96.9 million shares of Common Stock in exchange for the outstanding Common Stock of Columbia.⁶ The authorized capital stock of New NiSource consists of 420,000,000 shares, \$0.01 par value, of which 400,000,000 are common shares, and 20,000,000 are preferred

shares,⁷ of which, 4,000,000 have been designated as Series A Junior Participating preferred Shares and reserved for issuance under New NiSource's Shareholder Rights Agreement ("Rights Plan").

In addition, New NiSource will issue Stock Appreciation Income Linked SecuritiesSM ("SAILS") as part of the Merger, which will result in the issuance of between 6.4 million and 9.0 million shares of Common Stock on the fourth anniversary of the transaction, assuming 30% of the outstanding Columbia shares are exchanged for the stock consideration in the merger.

The cash portion of the consideration paid to Columbia shareholders in the Merger would range from approximately \$4 billion, assuming 30% of the outstanding Columbia shares are exchanged for the NiSource stock consideration, to approximately \$6 billion, if all of the Columbia shares are exchanged for the cash and SAILS consideration. NiSource has organized NiSource Finance to facilitate financing the cash portion of the Merger consideration and other costs associated with the Merger. NiSource Finance will make unsecured short-term borrowings under a 364-day revolving credit facility, with the option to convert outstanding loans at the expiration of the period to term loans maturing 364 days afterwards (the "Acquisition Debt"). Alternatively, NiSource Service would issue commercial paper back-stopped by the credit facilities. NiSource will guarantee the Acquisition Debt.

C. Other Outstanding Securities and Obligations of NiSource

In February 1999, NiSource issued 6,000,000 Premium Income Equity SecuritiesSM ("PIES") in conjunction with the acquisition of Bay State. Each PIES is a unit consisting of a stock purchase contract issued by NiSource and a preferred security issued by NIPSCO Capital Trust I ("Capital Trust"), a special purpose financing subsidiary of Capital Markets. The stock purchase contracts obligate the holders to purchase from NiSource, no later than February 19, 2003, for a price of \$50, a number of shares of NiSource Common Stock based on the closing price for NiSource Common Stock over a twenty day period prior to this date. Based on NiSource's trading price as of June 30, 2000, the aggregate number of shares of Common Stock that NiSource would issue as part of the PIES is

³ S.E.C. File No. 70-9129, Holding Co. Act Release No. 26798 (Dec. 22, 1997).

⁴ Columbia Energy Group Service Corporation and Columbia nonutility subsidiaries reply upon rule 52 for borrowing from Columbia.

⁵ S.E.C. File No. 70-8925, Holding Co. Act Release No. 26634 (Dec. 23, 1996).

⁶ The actual number of shares of Common Stock issued in the Merger will depend upon, among other things, the number of NiSource and Columbia common shares outstanding on the date on which the Merger is consummated and the elections made by Columbia's shareholders.

⁷ NiSource has the same number of authorized shares of common and Preferred Stock as New NiSource, but without par value.

approximately 13.1 million. Each preferred security has a stated liquidation amount of \$50 and represents an undivided ownership interest in the assets of Capital Trust and is guaranteed by Capital Markets. The assets of Capital Trust consist solely of the debentures of Capital markets maturing on February 19, 2005 that Capital Trust purchased with the net proceeds of the offering plus equity invested by Capital Markets.

NiSource also currently maintains certain credit arrangements for the benefit of its Subsidiaries that will remain outstanding following the Merger. Specifically, under the terms of a Support Agreement dated April 4, 1989, as amended, between NiSource and Capital Markets, NiSource is obligated to make payments of interest and principal on Capital Markets' obligations in the event of a failure to pay by Capital Markets. Restrictions in the Support Agreement prohibit recourse on the part of Capital Markets' creditors against the stock and assets of Northern Indiana, which are owned by NiSource. Capital Markets has entered into revolving credit agreements for \$200 million which may be used to support the issuance of commercial paper. As of June 30, 2000, Capital markets had issued \$186 million in commercial paper but there were no borrowing outstanding under the revolving credit agreements. Capital markets also has \$178 million available in money market lines of credit with \$141.5 million of borrowings outstanding as of June 30, 2000. Capital Markets also had outstanding \$300 million of medium-term notes having various maturities between April 2004 and May 2027.

In addition, the Support Agreement backs various guarantees and other forms of credit support that have been provided by Capital markets for the benefit of the NiSource Nonutility Subsidiaries. These include guarantees of securities issued by other subsidiaries, lease payment obligations, obligations under energy marketing contracts, obligations of cogeneration affiliates under operations and maintenance agreements, surety bonds and indemnification obligations. The maximum potential financial exposure of Capital Markets under all of these guarantees was approximately \$1 billion on June 30, 2000.

IV. Requested NiSource External Financing

A. Introduction

NiSource requests authority to issue and sell from time to time shares of its

authorized Common Stock and preferred Stock and, directly or indirectly through one or more Financing Subsidiaries, Long-Term Debt and other forms of preferred or equity-linked securities having maturities of up to 50 years. The aggregate amount of all the Common Stock, Preferred Stock, Long-Term Debt and other forms of preferred to equity-linked securities at any time outstanding during the Authorization Period would not exceed \$12 billion, provided that shares of NiSource Common Stock that are issued with respect to the SAILS and certain other currently outstanding equity-linked securities and shares of Preferred Stock that may be issued under the NiSource Shareholder Rights Agreement will not count against this limit. In addition, NiSource requests authority to issue and sell, directly or indirectly through one or more Financing Subsidiaries, Short-Term Debt in an aggregate principal amount at any time outstanding not to exceed \$2 billion. The aggregate principal amount of all indebtedness issued by NiSource or any Financing Subsidiary of NiSource at any time outstanding (including, specifically, Acquisition Debt, Long-Term Debt and Short-Term Debt) would not exceed the NiSource Debt Limitation. The amounts of securities that NiSource is requesting authority to issue and the dollar limitations here are in addition to the amounts of securities Columbia is currently authorized to issue and the dollar limitations imposed on Columbia under the Columbia Financing Orders.

NiSource contemplates that the Common Stock, Preferred Stock, Long-Term Debt and other preferred or equity-linked securities would be issued and sold directly to one or more purchasers in privately-negotiated transactions or to one or more investment banking or underwriting firms or other entities who would resell these securities without registration under the Securities Act of 1933 in reliance upon one or more applicable exemptions from registration, or to the public either (1) through underwriters selected by negotiation or competitive bidding or (2) through selling agents acting either as agent or as principal for resale to the public either directly or through dealers.

B. Continuation, Extension or Renewal of Acquisition Debt

As indicated, the cash portion of the consideration to be paid in the Merger and other associated costs (estimated at approximately \$4.0 billion to \$6.0 billion) would be financed through borrowings by NiSource Finance under

a bank facility. After the Merger, NiSource intends to refinance some or all of the Acquisition Debt from the proceeds of issuances of equity securities and Long-Term debt securities, as described below, and/or cash proceeds from sales of assets. Pending this refinancing, NiSource requests authorization to maintain or replace the facility under which the Acquisition Debt is issued and renew or extend the maturities of borrowings, and to renew or extend the associated guaranty.

C. Other Debt

1. *Long-Term Debt.* Long-Term Debt (1) may be convertible into any other securities of NiSource; (2) will have maturities ranging from one to fifty years; (3) may be subject to optional and/or mandatory redemption, in whole or in part, at par or at various premiums above the principal amount; (4) may be entitled to mandatory or optional sinking fund provisions; (5) may provide for reset of the coupon under a remarketing arrangement; and (6) may be called from existing investors by a third party. The maturity dates, interest rates, redemption and sinking fund provisions and conversion features, if any, with respect to the Long-Term Debt of a particular series, as well as any associated placement, underwriting or selling agent fees, commissions and discounts, if any, will be established by negotiation or competitive bidding. Assuming that 30% of the Columbia shares are exchanged for NiSource Common stock in the Merger and that certain non-core assets of NiSource and/or Columbia are sold before or shortly after the Merger, NiSource states that it will be able to maintain a rating for all Long-Term Debt that is at the investment grade level as established by a nationally recognized statistical rating organization.

2. *Short-Term Debt.* Subject to the NiSource Debt Limitation, NiSource proposes to issue and sell from time to time, directly or indirectly through one or more Financing Subsidiaries, Short-Term Debt in an aggregate principal amount at any time outstanding not to exceed \$2 billion. The effective cost of money on Short-Term Debt authorized in this proceeding would not exceed at the time of issuance 300 basis points over the LIBOR for maturities of one year or less.

Commercial paper would be sold, directly or indirectly through one or more Financing Subsidiaries, in established domestic or European commercial paper markets. NiSource also proposes to establish, directly or indirectly through one or more

Financing Subsidiaries, credit lines with banks or other institutional lenders in an aggregate principal amount not to exceed the proposed Short-Term Debt limitation. Loans under these lines will have maturities of less than one year from the date of each borrowing. NiSource also proposes to engage in other types of short-term financing generally available to borrowers with comparable credit ratings as it may deem appropriate in light of its needs and market conditions at the time of issuance.

D. Common Stock, Equity Linked Securities and Stock Based Plans

NiSource seeks authority to issue and sell Common Stock or options, warrants or other stock purchase rights exercisable for Common Stock, under underwriting agreements of a type generally standard in the industry. Public distributions would be under private negotiation with underwriters, dealers or agents or effected through competitive bidding among underwriters. In addition, sales would be made through private placements or other non-public offerings to one or more persons. All Common Stock sales would be at rates or prices and under conditions negotiated or based upon, or otherwise determined by, competitive capital markets.

NiSource would issue and sell Common Stock through underwriters or dealers, through agents, or directly to a limited number of purchasers or a single purchaser. If underwriters are used in the sale of Common Stock, these securities would be acquired by the underwriters for their own account and would be resold from time to time in one or more transactions, including negotiated transactions, at a fixed public offering price or at varying prices determined at the time of sale.

NiSource may also issue Common Stock or options, warrants or other stock purchase rights exercisable for Common Stock in public or privately-negotiated transactions as consideration for the equity securities or assets of other companies, provided that the acquisition of any of these equity securities or assets have been authorized in a separate proceeding or is exempt under the Act or the rules under the Act (specifically rule 58).

NiSource also proposes to issue Common Stock and/or purchase shares of its Common Stock (either currently or under forward contracts) in the open market for purposes of reissuing the shares at a later date under the SAILSSM and PIESSM or other equity-linked securities.

In addition, NiSource proposes to issue shares of its Common Stock to satisfy its obligations under its stock-based plans, the 1994 Long-Term Incentive Plan, the Nonemployee Director Stock Incentive Plan and the Employee Stock Purchase Plan. Shares of Common Stock issued under these plans may either be newly issued shares, treasury shares or shares purchased in the open market. NiSource would make open-market purchases of Common Stock in accordance with the terms of or in connection with the operation of the plans under rule 42. NiSource also proposes to issue and/or purchase shares of Common Stock under these existing stock plans, as they may be amended or extended, and similar plans or plan funding arrangements later adopted without any additional prior Commission order. Stock transactions of this variety would thus be treated the same as other stock transactions.

E. Preferred Stock

NiSource would not issue any shares of its authorized Preferred Stock in the Merger and would not have any shares of Preferred Stock outstanding at the time that it registers as a holding company. However, after it registers, NiSource seeks to have the flexibility to issue its authorized Preferred Stock or, directly or indirectly through one of more Financing Subsidiaries, to issue Long-Term Debt and other types of preferred or equity-linked securities (including specifically, trust preferred securities). The proceeds of Preferred Stock, Long-Term Debt or other preferred or equity-linked securities would enable NiSource to reduce the Acquisition Debt and Short-Term Debt or other debt issued or guaranteed by NiSource with more permanent capital, and provide a source of future financing for the operations of and investments in nonutility businesses which are exempt under the Act.

Preferred Stock or other types of preferred or equity-linked securities would be issued in one or more series with the rights, preferences, and priorities as may be designated in the instrument creating each of the series, as determined by NiSource's board of directors. All of these securities will be redeemed no later than fifty years after the issuance. The dividend rate on any series of Preferred Stock or other preferred or equity-linked securities will not exceed at the time of issuance 500 basis points over the yield to maturity of a U.S. Treasury security having a remaining term equal to the term of these securities. Dividends or distributions on Preferred Stock or other

preferred or equity-linked will be made periodically and to the extent funds are legally available for this purpose, but may be made subject to terms which allow the issuer to defer individual payments for specified periods. Preferred Stock or other preferred or equity-linked securities may be convertible or exchangeable into shares of Common Stock.

F. NiSource Utility Subsidiaries' Short-Term Debt

The NiSource Utility Subsidiaries request authority to issue and sell from time to time Short-Term Debt in an aggregate amount at any one time outstanding not to exceed the following amounts: (1) Northern Indiana—\$1 billion; (2) Kokomo—\$50 million; (3) NIFL—\$50 million; (4) Bay State—\$250 million; and (5) Northern—\$50 million. Subject to the limitations, the NiSource Utility Subsidiaries may engage in short-term financing as they may deem appropriate in light of their needs and market conditions at the time of issuance. These short-term financing could include, without limitation, commercial paper sold in established domestic or European commercial paper markets in a manner similar to NiSource, bank lines and debt securities issued under its indentures and note programs. The effective cost of money on Short-Term Debt authorized in this proceeding will not exceed 300 basis points over the LIBOR for maturities of one year or less.

G. NiSource Nonutility Subsidiary Financing

In order to finance investments in energy-related or otherwise functionally-related, nonutility businesses, it will be necessary for the Nonutility Subsidiaries to have the ability to engage in financing transactions that are commonly accepted for these types of investments. NiSource states that, in almost all cases, these financings will be exempt from prior Commission authorization under rule 52(b).⁸

However, in the limited circumstances where the Nonutility Subsidiary making the borrowings is now wholly-owned by NiSource, directly or indirectly, authority is requested under the Act for NiSource or a Nonutility Subsidiary, as the case may be, to make those loans to these subsidiaries at interest rates and maturities designed to provide a return to the lending company of not less than

⁸ Financings by Columbia will be carried out under the terms of the Columbia Financing Orders and not under rule 52.

its effective cost of capital. If these loans are made to a Nonutility Subsidiary, the company would not sell any services to any associate Nonutility Subsidiary unless the company falls within one of the categories of companies to which goods and services may be sold on a basis other than "at cost," as described below. Furthermore, in the event those loans are made, NiSource would include in the next certificate filed under 24 in this proceeding substantially the same information as that required on Form U-6B-2 with respect to the transition.

H. Guarantees

1. *NiSource Guarantees.* NiSource requests authority, directly or through one or more Financing Subsidiaries, to guarantee indebtedness or contractual obligations or provide other forms of credit support on behalf or for the benefit of its Subsidiaries in an aggregate amount not to exceed \$5 billion at any one time outstanding ("NiSource Guarantees"), provided however, that the amount of any NiSource Guarantees in respect of obligations of any Subsidiaries shall also be subject to the limitations of rule 53(a)(1) or rule 58(a)(1), as applicable.

Any securities issued by Financing Subsidiaries of NiSource that are guaranteed or supported by other forms of credit enhancement provided by NiSource would not count against this limitation, but instead would count against the limitation on the same types of securities that NiSource is authorized to issue. The proposed limitation on NiSource Guarantees would not include the amount of any guarantees or other forms of credit support outstanding at the time of the Merger or guarantees or other forms of credit support provided with respect to securities issued by any Financing Subsidiary (the amounts of which would count only against the proposed limitations on the amounts of debt and equity securities that NiSource may issue).

NiSource proposes to charge each Subsidiary a fee for each guarantee provided on its behalf that is not greater than the cost, if any, of obtaining the liquidity necessary to perform the guarantee (for example, bank line commitment fees or letter of credit fees, plus other transactional expenses) for the period of time the guarantee remains outstanding.

2. *Nonutility Subsidiary Guarantees.* Nonutility Subsidiaries (including Financing Subsidiaries without credit support from NiSource but excluding Columbia) request authority to provide guarantees of indebtedness or contractual obligations or provide other

forms of credit support on behalf or for the benefit of other Nonutility Subsidiaries in an aggregate principal or nominal amount not to exceed \$2 billion at any one time outstanding ("Nonutility Subsidiary Guarantees"). This authorization is in addition to any guarantees that are exempt under rules 45(b) and 52, provided that the amount of any Nonutility Subsidiary Guarantees in respect of obligations of any Rule 58 Subsidiary shall also be subject to the limitations of rule 58(a)(1). The Nonutility Subsidiary providing any of the credit support may charge its associate company a fee for each guarantee provided on its behalf determined in the same manner as specified above.

I. Interest Rate Management Devices

1. *Interest Rate Hedges.* NiSource and, to the extent not exempt under rule 52, its Subsidiaries request authority to enter into Interest Rate Hedges in order to manage and minimize interest rate costs. Applicants assert that Interest Rate Hedges would only be entered into with counterparties whose senior debt ratings, or the senior debt ratings of the parent companies of the counterparties, as published by Standard and Poor's Ratings Group, are equal to or greater than BBB, or an equivalent rating from Moody's Investors Service, Fitch Investor Service or Duff and Phelps.

Applicants state that Interest Rate Hedges would involve the use of financial instruments commonly used in today's capital markets, such as interest rate swaps, caps, collars, floors, and structured notes (i.e., a debt instrument in which the principal and/or interest payments are indirectly linked to the value of an underlying asset or index), or transactions involving the purchase or sale, including short sales, of U.S. Treasury securities.

2. *Anticipatory Hedges.* In addition, Applicants request authority to enter into interest rate hedging transactions with respect to Anticipatory Hedges, subject to certain limitations and restrictions. Anticipatory Hedges would be used to fix and/or limit the interest rate risk associated with any new issuance through (1) a forward sale of exchange-traded U.S. Treasury futures contracts, U.S. Treasury obligations and/or a forward swap (each a "Forward Sale"); (2) the purchase of put options on U.S. Treasury obligations (a "Put Options Purchase"); (3) a Put Options Purchase in combination with the sale of call options on U.S. treasury obligations ("Zero Cost Collar"); (4) transactions involving the purchase or sale, including short sales, of U.S. Treasury obligations; or (5) some

combination of a Forward Sale, Put Options Purchase, Zero Cost Collar and/or other derivative or cash transactions, including, but not limited to structured notes, caps and collars, appropriate for the Anticipatory Hedges.

Anticipatory Hedges might be executed on-exchange ("On-Exchange Trade") with brokers through the opening of futures and/or options positions traded on the Chicago Board of Trade, the opening of over-the-counter positions traded on the Chicago Board of Trade, the opening of over-the-counter positions with one or more counter parties ("Off-Exchange Trades"), or a combination of On-Exchange Trades and Off-Exchange Trades. NiSource or a subsidiary will determine the optimal structure of each Anticipatory Hedge transaction at the time of execution.

Applicants state that they will comply with the then existing financial disclosure requirements of the Financial Accounting Standards Board associated with hedging transactions.

J. Changes in Capital Stock of Subsidiaries

NiSource and its Subsidiaries request authorization to change the terms of the authorized capital stock capitalization of any wholly-owned Subsidiary or intermediate holding company by an amount deemed appropriate by NiSource or other intermediate parent company.⁹ If that authority were granted, a Subsidiary would be able to change the par value or change between par and no-par stock, without additional Commission approval and subject to any necessary state approvals.

K. Financing Subsidiaries

NiSource and its Subsidiaries request authorization to acquire, directly or indirectly, the equity securities of one or more corporations, trusts, partnerships, or other entities ("Financing Subsidiaries") created specifically for the purpose of facilitating the financing of the authorized and exempt activities of NiSource and its Subsidiaries. This authorization would be in addition to arrangements with NiSource Finance, a wholly-owned special purpose financing subsidiary, and two other special entities owned directly or indirectly by NiSource.¹⁰ The Financing Subsidiaries would issue Long-Term Debt or equity securities but not limited to monthly income preferred securities,

⁹ If a subsidiary is not wholly-owned, all other required shareholders consent for the change would be obtained.

¹⁰ NiSource Capital Markets, Inc. ("Capital Markets") and Capital Trust I, a special purpose financing subsidiary of Capital Markets.

to third parties and would dividend, loan or otherwise transfer the proceeds of these financings or as directed by the Financing Subsidiary's parent company.

NiSource would, if required, guarantee, provide support for or enter into expense agreements in respect of the obligations of any Financing Subsidiary that it organizes. The Subsidiaries may also provide guarantees and enter into expense agreements, if required, on behalf of any Financing Subsidiaries that they organize under rules 45(b)(7) and 52, as applicable. The amount of any Long-Term Debt or preferred securities issued by any Financing Subsidiary would be counted against any limitation on the amounts of similar types of securities that would be issued directly by the parent company of a Financing Subsidiary. In those cases, however, the guaranty by the parent company would not also be counted against the limitations on NiSource Guarantees of Subsidiary Guarantees.

L. Intermediate Subsidiaries

NiSource requests authority to acquire, directly or indirectly, the securities of one or more intermediate subsidiaries ("Intermediate Subsidiaries") organized exclusively for the purpose of acquiring, financing, and holding the securities of one or more existing or future Nonutility Subsidiaries, including but not limited to EWGs, FUCOs, Rule 58 Subsidiaries or ETCs. Intermediate Subsidiaries may expand up to \$250 million on preliminary development activities. To the extent these transactions are not exempt from the Act or otherwise authorized or permitted by rule, regulation or order of the Commission, NiSource requests authority for Intermediate Subsidiaries to provide management, administrative, project development and operating services to these entities as fair market prices under rule 90(d), subject to the limitations set forth in section IV.M.2 of this notice below.

M. Sales of Services and Goods Among Subsidiaries

NiSource seeks exemptions in two areas from the at-cost standards of section 13(b) of the Act and rules 90 and 91 under the Act for the sales of services and goods among Subsidiaries.

1. *Continuation of Certain Existing Arrangements between NiSource Subsidiaries.* NiSource requests an exemption under section 13(b) of the Act in order that certain agreements¹¹

would remain in place for a period of not more than one year after the Merger. During that period, NiSource would assess the need to maintain these arrangements in place and would either discontinue them or address, in a separate application, the justification for continuing them on a permanent basis.

2. *Sales and Service Contracts Among Nonutility Subsidiaries.* NiSource's Nonutility Subsidiaries (other than Columbia) request authorization to provide services and sell goods to each other at fair market prices determined without regard to cost, and therefore request an exemption (to the extent that Rule 90(d) does not apply) under section 13(b) from the cost standards of rules 90 and 91 as applicable to these transactions, in any case in which the Nonutility Subsidiary purchasing the goods or services is:

(1) A FUCO or foreign EWG that derives no part of its income, directly or indirectly, from the generation, transmission, or distribution of electric energy for sale within the United States;

(2) An EWG that sells electricity at market-based rates that have been approved by the Federal Energy Regulatory Commission ("FERC"), provided that the purchaser is not Northern Indiana;

(3) A "qualifying facility" ("QF") within the meaning of the Public Utility Regulatory Policies Act of 1978, as amended ("PURPA") that sells electricity exclusively (a) at rates negotiated at arms-length to one or more industrial or commercial customers purchasing the electricity for their own use and not for resale, and/or (b) to an electric utility company (other than Northern Indiana) at the purchaser's "avoided cost" as determined in accordance with the regulations under PURPA;

(4) A domestic EWG or QF that sells electricity at rates based upon its cost of service, as approved by FERC or any state public utility commission having jurisdiction, provided that the purchaser thereof is not Northern Indiana; or

(5) A Rule 48 Subsidiary or any other Nonutility Subsidiary that (a) is partially owned by NiSource, provided

provide services to certain NiSource Utility Subsidiaries at market rates. In addition, Bay State provides repair and installation services to EnergyUSA, a NiSource holding company which has management responsibility for many of NiSource's nonutility subsidiaries and investments. The services are rendered for propane equipment sold by EnergyUSA under an agreement entered into in December 1999. Bay State also supplies or procures necessary materials. Under the agreement, Bay State charges a flat response fee and standard hourly labor rates. There may be other similar kinds of arrangements in place between NiSource Subsidiaries for the sale of services, some of which may not be cost-based.

that the ultimate purchaser of the goods or services is not a Utility Subsidiary, NiSource Services (or any other entity within the NiSource system whose activities and operations are primarily related to the provision of goods and services to the Utility Subsidiaries), (b) is engaged solely in the business of developing, owning, operating and/or providing services or goods to Nonutility Subsidiaries described in clauses (1) through (4) immediately above, or (c) does not derive, or indirectly, any material part of its income from sources within the United States and is not a public-utility company operating within the United States.

N. Activities of Rule 58 Subsidiaries Outside the U.S.

NiSource, on behalf of any current or future Rule 58 Subsidiaries, requests authority to engage in certain "energy-related" activities permitted by rule 58 outside the United States. These activities would include: (1) The brokering and marketing of electricity, natural gas and other energy commodities ("Energy Marketing"); (2) energy management services ("Energy Management Services"), including the marketing, sale, installation, operation and maintenance of various products and services related to energy management and demand-side management; and (3) engineering, consulting and other technical support services ("Consulting Services") with respect to energy-related businesses and for individuals.

NiSource requests that the Commission authorize Rule 58 Subsidiaries to (1) engage in Energy Marketing activities in Canada and reserve jurisdiction over Energy Marketing activities outside of Canada pending completion of the record in this proceeding; and (2) provide Energy Management Services and Consulting Services anywhere outside the United States. In addition, NiSource requests that the Commission reserve jurisdiction over other activities of Rule 58 Subsidiaries outside the United States, pending completion of the record.

In addition, NiSource requests authorization for Rule 58 Subsidiaries to engage in gas-related activities outside the United States, subject to certain proposed limitations and a requests for reservation of jurisdiction. Specifically, NiSource requests approval for Rule 58 Subsidiaries to engage in the development, exploration and production of natural gas and oil in Canada and to invest up to \$300 million in the equity securities or assets of new or existing companies that derive

¹¹ SM&P Utility Resources and Miller Pipeline Corp., two NiSource Nonutility Subsidiaries,

substantially all of their income from these activities.

In addition, NiSource requests approval for Rule 58 Subsidiaries to invest, directly or indirectly through other subsidiaries, in natural gas pipelines or storage facilities located outside the United States. Investments in these entities would also count against the \$300 million investment limitation. NiSource requests that the Commission reserve jurisdiction over (1) the proposed exploration and production activities in foreign countries other than Canada pending completion of the record; and (2) investments in pipeline and storage facilities outside the United States pending completion of the record.

O. Payment of Dividends

1. *NiSource, Columbia and the Utility Subsidiaries.* Applicants state that before or shortly after the Merger, certain non-core assets or businesses of Columbia would be sold. In that event, the Applicants request authority for Columbia to transfer the net proceeds of the sale or sales to NiSource, either by paying a dividend or by repurchasing shares of its Common Stock that are held by NiSource. NiSource intends to use some or all of the proceeds of these non-core asset sales to repay Acquisition Debt.

2. *Nonutility Subsidiaries.* Applicants state that there may be situations in which one or more Nonutility Subsidiaries would have unrestricted cash available for distribution in excess of current and retained earnings. Accordingly, Applicants propose that the Nonutility Subsidiaries be permitted to pay dividends from time to time through the Authorization Period, out of capital and unearned surplus (including any revaluation reserve), to the extent permitted under applicable corporate law.

P. Tax Allocation Agreement

NiSource requests that the Commission approve the tax allocation agreement ("Tax Allocation Agreement") among NiSource and its Subsidiaries to allocate consolidated income tax liabilities in a manner other than permitted by rule 45(c). Applicants state that approval is necessary because the proposed Tax Allocation Agreement provides for the retention by NiSource of certain payments from the Subsidiaries for tax losses that NiSource will incur due to interest expense it would pay on the Acquisition Debt, rather than the allocation of those losses to Subsidiaries without payment, as rule 45(c)(5) would otherwise require. Applicants requests that the

Commission reserve jurisdiction over the Tax Allocation Agreement pending completion of the record.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00-25332 Filed 10-2-00; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43347; File No. SR-OPRA-00-08]

Options Price Reporting Authority; Notice of Filing of a Proposal To Amend the Options Price Reporting Authority Plan To Establish Standards for Determining a Participation Fee

September 26, 2000.

Pursuant to Rule 11Aa3-2 under the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on September 12, 2000, the Options Price Reporting Authority ("OPRA")² submitted to the Securities and Exchange Commission ("SEC" or "Commission") an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information ("Plan"). The proposed Plan amendment would incorporate in the Plan factors to be considered by OPRA in determining the amount of the participating fee described in the current Plan as payable by each new party to the Plan.

I. Description and Purpose of the Amendment

The Plan currently provides that any national securities exchange or registered securities association whose rules governing the trading of standardized options have been approved by the Commission may become a party to the Plan, provided it agrees to conform to the terms and conditions of the Plan and pays a participation fee to OPRA. The Plan does not establish the amount of the

participation fee, but instead, states that the amount of the fee will be determined by OPRA in connection with each new application for participation, based upon standards incorporated in the Plan.³ This approach provides sufficient flexibility to permit the determination of the fee to take into account the unique circumstances of each new application while, at the same time, assuring that the amount of the fee is based upon a set of established standards, thus enabling the fee to be administered in a fair and consistent manner. Under this structure, the amount of the participation fee will be determined in discussions with each applicant in light of the standards embodied in the Plan, under the general oversight of the Commission. This is the same general approach that is reflected in the Plans of other registered securities information processors, such as the Consolidated Tape Association and the Consolidated Quotation System.⁴

Although the Plan currently provides for a participation fee to be determined in the manner described above, it does not reflect the specific standards to be applied in determining the amount of the fee. Instead, the Plan contemplates that these standards will be incorporated in the Plan by means of a Plan amendment to be filed with and approved by the Commission prior to the determination of the participation fee to be paid by the International Securities Exchange, LLC ("ISE"), which at present is the only party to the Plan to which a fee based upon these standards will apply. This filing proposes to amend the Plan for the purpose of incorporating these standards in the Plan. As the Plan provides, ISE, as the only party subject to a participation fee to be determined on the basis of the standards now proposed, did not vote on the adoption of these standards, but it did participate in the discussion of the proposed standards.

The purpose of the participation fee is to require each new party to the Plan to pay a fair share of the costs previously paid by the other parties for the development, expansion, and maintenance of the OPRA system. Consistent with this purpose, the standards now proposed to be embodied in the Plan for the determination of the participation fee are for the most part

¹ 17 CFR 240.11Aa3-2.

² OPRA is a National Market System Plan approved by the Commission pursuant to Section 11A of the Act and Rule 11Aa3-2 thereunder. See Securities Exchange Act Release No. 17638 (March 18, 1981).

The Plan provides for the collection and dissemination of last sale and quotation information on options that are traded on the member exchanges. The six exchanges that are participants to the Plan are the American Stock Exchange, the Chicago Board Options Exchange, the International Securities Exchange, the New York Stock Exchange, the Pacific Exchange, and the Philadelphia Stock Exchange.

³ See Securities Exchange Act Release No. 42817 (May 24, 2000), 65 FR 35149 (June 1, 2000) (SR-OPRA-99-01).

⁴ See Section III(c) of the Second Restatement of the CTA Plan as restated December 1995, and Section III(c) of the Restatement of the CQ Plan as restated December 1995.

concerned with these categories of costs. Because OPRA, as an administrative committee of exchanges, does not account for any assets of its own, it does not capitalize any of its costs but instead, simply passes them on to the exchanges. However, OPRA believes that the concept of capitalized costs is an appropriate factor to be taken into account in determining what should be a proper participation fee. Accordingly, the first factor proposed to be included in the Plan for this purpose is to consider what would have been amortized as OPRA's capital expenditures over the past five years if OPRA were subject to generally accepted accounting principles. OPRA believes that five years is an appropriate time frame for this purpose not only because it represents a reasonable life for the kinds of computer hardware and software assets that make up the OPRA system, but also because it is a short enough period to provide a reasonable basis for determining how much of OPRA's past expenses should be shared by a new party.

The next factor proposed to be considered is an assessment of costs incurred and to be incurred by OPRA in connection with any modifications to the OPRA system necessary to accommodate the new party, unless these costs have otherwise been paid or reimbursed by the new party. This, too, is a cost-based factor, and reflects that it is appropriate for a new party to pay the costs uniquely associated with its becoming a party.

Finally, OPRA proposes that the determination of the participation fee would also take into account previous fees paid by other new parties. Of course, the closer in time any such prior fees were paid and the greater the similarity of the circumstances between the participation of the other parties and the party that is to pay the participation fee under consideration, the greater will be the weight given to this factor, in the interest of fairness and consistency.

Although the participation fee to be paid by ISE will not be payable unless and until specific standards for determining the fee have been approved by the Commission, ISE and the other parties have had discussions concerning what would be the amount of the fee if the standards proposed in this amendment were approved, and they have reached agreement on both the amount of the fee and the terms of payment.

II. Implementation of the Plan Amendment

OPRA intends to make the proposed amendment to the Plan reflected in this

filing effective immediately upon the approval of the amendment by the Commission pursuant to Rule 11Aa3-2 under the Act.⁵

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed Plan amendment is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, and all written statements with respect to the proposed Plan amendment that are filed with the Commission, and all written communications relating to the proposed Plan amendment between the Commission and any person, other than those withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available at the principal offices of OPRA. All submissions should refer to File No. SR-OPRA-00-08 and should be submitted by October 24, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁶

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 00-25294 Filed 10-2-00; 8:45 am]
BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43346; File No. SR-NASD-00-33]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 by the National Association of Securities Dealers, Inc. to Amend NASD Rule 3340 to Prohibit Publication of Quotations or Indications of Interest in a Security During a Trading Halt

September 26, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on June 7, 2000, the National Association of Securities Dealers, Inc. ("NASD" or

"Association"), through its wholly owned subsidiary, NASD Regulation, Inc. ("NASD Regulation"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation. On August 2, 2000, NASD Regulation amended the proposal.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation proposes to amend NASD Rule 3340 to prohibit the publication by members of quotations or indications of interest for a security during a trading halt. The text of the proposed rule change is below. Proposed new language is in italics. Proposed deletions are in brackets.

3340. Prohibition on Transactions, Publication of Quotations, or Publication of Indications of Interest During Trading Halts

No member or person associated with a member shall, directly or indirectly, effect any transaction or *publish a quotation, a priced bid and/or offer, an unpriced indication of interest (including "bid wanted" and "offer wanted" and name only indications), or a bid or offer, accompanied by a modifier to reflect unsolicited customer interest*, in [a] any security as to which a trading halt is currently in effect.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Regulation included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD Regulation has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

³ See August 2, 2000 letter from Kathleen A. O'Mara, Assistant General Counsel, NASD Regulation to Katherine A. England, Assistant Director, Division of Market Regulation, SEC ("Amendment No. 1"). Amendment No. 1 broadened the scope of the proposed rule change.

⁵ 17 CFR 240.11Aa3-2.

⁶ 17 CFR 200.30-3(a)(29).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to expressly prohibit members from publishing quotations or indications of interest in a security during a trading halt. Currently, NASD Rule 3340 prohibits members from effecting a transaction in a security during a trading halt, but does not expressly state that members are prohibited from publishing quotations or indications of interest.⁴ However,

NASD Rules 3310⁵ and 3320,⁶ respectively, state that members are required to enter only bona fide quotations and honor such quotations if presented with an order. Thus, if during a trading halt, a member that is publishing a quotation for a security is presented with a liability order for such security, the member would be faced with the choice of either honoring its quote and violating the rule prohibiting transactions in a security during a trading halt, or complying with the trading halt rule but violating the Firm Quote Rule. In addition, the entry of quotations or indications of interest while there is a trading halt in a security could be potentially misleading. To prevent this from happening, NASD Regulation is proposing that NASD Rule 3340 be amended to expressly state that members are prohibited from publishing quotations or indications of interest during a trading halt.

2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁷ which requires, among other things, that the Association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The NASD believes that, under the proposed rule change, preventing the publication of quotations or indications of interest during a trading halt will prevent members from seeking to trade at a time

when they cannot execute a trade. Thus, the proposal is designed to protect investors and to insure the integrity of quotations by preventing fictitious or misleading quotations.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR-NASD-00-33 and should be submitted by October 24, 2000.

⁴ The Commission may impose trading suspensions in the United States securities markets under Section 12(k) of the Act. See 15 U.S.C. 781(k).

NASD Rule 4120 provides that Nasdaq may halt trading: (1) in the over-the-counter market of a security listed on Nasdaq to permit the dissemination of material news; or (2) in the over-the-counter market of a security listed on a national securities exchange during a trading halt imposed by such exchange to permit the dissemination of material news; or (3) by (i) Consolidated Quotation System ("CQS") market makers in a CQS security because of an order imbalance or influx ("operational trade halt"); or (ii) Nasdaq market makers in a security listed on Nasdaq, when the security is a derivative or component of a CQS security and a national securities exchange imposes an operational trading halt in that CQS security; or (4) in an American Depository Receipt ("ADR") or other security listed on Nasdaq, when the Nasdaq-listed security or the security underlying the ADR is listed on or registered with a national or foreign securities exchange or market, and the national or foreign securities exchange or market, or regulatory authority overseeing such exchange or market, halts trading in such security for regulatory reasons; or (5) in a security listed on Nasdaq when Nasdaq requests from the issuer information relating to: (i) material news; (ii) the issuer's ability to meet Nasdaq listing qualification requirements, as set forth in NASD Rule 4300 and 4400 Series; or (iii) any other information which is necessary to protect investors and the public interest. See also Securities Exchange Act Release No. 42806 (May 22, 2000), 65 FR 34518 (May 30, 2000) (SR-NASD-99-33), which establishes Nasdaq's trade and quote halt authority in certain specific circumstances in securities included in the OTC Bulletin Board Service ("OTCBB"), and Notice to Members 99-69 soliciting comments on whether NASD Regulation should have authority to halt trading in non-Nasdaq, non-OTCBB, over-the-counter securities under certain circumstances.

⁵ NASD Rule 3310 states that: [n]o member shall publish or circulate, or cause to be published or circulated, any notice, circular, advertisement, newspaper article, investment service, or communication of any kind which purports . . . to quote the bid price or asked price for any security, unless such member believes that such quotation represents a bona fide bid for, or offer of, such security * * *.

NASD Rule IM-3310 states, among other things, that: [i]t would be inconsistent with the above provisions for a member, for itself or for any other person, to publish or circulate or to cause to be published or circulated, by any means whatsoever, any quotation for any security without having reasonable cause to believe that such quotation is a bona fide quotation, is not fictitious and is not published or circulated or caused to be published or circulated for any fraudulent, deceptive or manipulative purpose. IM-3310 also provides: "[f]or the purposes of this interpretation, the term 'quotation' shall include any bid or offer or any formula, such as 'bid wanted' or 'offer wanted,' designed to induce any person to make or submit any bid or offer."

⁶ NASD Rule 3320 ("Firm Quote Rule") states that: [n]o member shall make an offer to buy from or sell to any person any security at a stated price unless such member is prepared to purchase or sell, as the case may be, at such price and under such conditions as are stated at the time of such offer to buy or sell.

⁷ 15 U.S.C. 78o-3(b)(6).

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00-25295 Filed 10-2-00; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43344; File No. SR-NASD-00-23]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 by the National Association of Securities Dealers, Inc. Relating to Amendments to Order Audit Trail System Rules

September 26, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 19, 2000, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly-owned subsidiary, NASD Regulation, Inc. ("NASD Regulation"), filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by NASD Regulation. On September 5, 2000, NASD Regulation amended its proposal.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation is proposing to amend NASD Rules 6951, 6954, 6955 and 9610. The proposed rule change would: (1) provide that the time of order origination and receipt for an electronic order is the time the order is captured by a member's electronic order-routing or execution system; for a manual order that is fewer than 10,000 shares, the time of order origination and receipt is the time the order is received by the

member's trading desk or trading department for execution or routing purposes; and for a manual order that is 10,000 shares or greater, the time of order origination and receipt is the time the order is received by the member from the customer; (2) exclude certain members from the definition of "Reporting Member" for those orders that meet specified conditions and are recorded and reported to the Order Audit Trail System ("OATS") by another member; (3) require any receiving reporting member, including electronic communications networks ("ECNs"), that receive routed orders, electronically or manually, to capture and report a routed order identifier; and (4) permit NASD Regulation to grant exemptive relief from the OATS reporting requirements to members that meet specified criteria.

The text of the proposed rule change follows. Proposed new rule language is in *italics*; proposed deletions are in brackets.

NASD Systems and Programs

6950. Order Audit Trail System

6951. Definitions

For purposes of Rules 6950 through 6957:

- (a) through (m) No Change.
- (n) "Reporting Member" shall mean a member that receives or originates an order and has an obligation to record and report information under Rules 6954 and 6955. *A member shall not be considered a Reporting Member in connection with an order, if the following conditions are met:*
 - (1) *the member engages in non-discretionary order routing process, pursuant to which it immediately routes, by electronic or other means, all of its orders to receiving Reporting Member;*

* * * * *

- (2) *the members does not direct and does not maintain control over subsequent routing or execution by the receiving Reporting Member;*

- (3) *the receiving Reporting Member records and reports all information required under Rules 6954 and 6955 with respect to the orders; and*

- (4) *the member has a written agreement with the receiving Reporting Members specifying the respective functions and responsibilities of each part to affect full compliance with the requirements of Rules 6954 and 6955.*

* * * * *

6954. Recording of Order Information

- (a) No Change.
 - (b) Order Origination and Receipt.
- Unless otherwise indicated, the following order information must be recorded under this Rule when an order is received or originated. *For purpose of this Rule, the order origination and receipt time for an electronic order is the time the order is captured by a member's electronic order-routing or*

execution system; for a manual order that is fewer than 10,000 shares, the order origination and receipt time is the time the order is received by the member's trading desk or trading department for execution or further routing purposes; and for a manual order that is 10,000 shares or greater, the order origination and receipt time is the time the order is received by the member from the customer.

- (1) through (18) No Change.

- (c) Order Transmittal.

Order information required to be recorded under this Rule when an order is transmitted includes the following.

- (1) and (2) No Change.

- (3) When a member electronically transmits an order for execution on an Electronic Communications Network:

- (A) the transmitting Reporting Member and shall record:

- (i) the fact that the order was transmitted to an Electronic Communications Network.

- (ii) the order identifier assigned to the order by the Reporting Member.

- (iii) the maker participant symbol assigned by the Association to the Reporting Member.

- (iv) the market participant symbol assigned by the Association to the member to which the order is transmitted,

- (v) the date the order was first originated or received by the Reporting Member,

- (vi) the date and time the order is transmitted, and

- (vii) the number of shares to which the transmission applies; and

- (B) the receiving Reporting Member operating the Electronic Communications Network shall record:

- (i) the fact that the order was received by an Electronic Communications Network,

- (ii) the order identifier assigned to the order by the member that transmits the order,

- (iii) [(ii)] the market participant symbol assigned by the Association to the transmitting Reporting Member, and

- (iv) [(iii)] other information items in Rule 6954(b) that apply with respect to such order, which must include information items (1), (2), (3), (6), (7), (8), (10), (11), (12), (13), (15), and (16).

- (4) When a member manually transmits an order to another member, other than to an Electronic Communications Network:

- (A) the transmitting Reporting Member shall record:

- (i) the fact that the order was transmitted manually,

- (ii) the order identifier assigned to the order by the Reporting Member,

- (iii) the market participant symbol assigned by the Association to the Reporting Member,

- (iv) the market participant symbol assigned by the Association to the member to which the order is transmitted,

- (v) the date the order was first originated or received by the Reporting Member,

- (vi) the date and time the order is transmitted,

- (vii) the number of shares to which the transmission applies, and

- (viii) for each order to be included in a bunched order, the bunched order route indicator assigned to the bunched order by the Reporting Member; and

- (B) the receiving Reporting Member shall record, in addition to all other information

⁸ 17 CFR 2000.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Alden S. Adkins, Senior Vice President and General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated September 5, 2000 ("Amendment No. 1"). Amendment No. 1 proposed substantive changes to the proposed rule language, including the definition of the time of receipt for manual block orders of 10,000 shares or greater, and the provisions for exemptive relief.

items in Rule 6954(b) that apply with respect to such order:

(i) the fact that the order was received manually, [and]
(ii) the order identifier assigned to the order by the member that transmits the order, and

(iii) [(ii)] the market participant symbol assigned by the Association to the member that transmits the order.

(5) When a member manually transmits an order to an Electronic Communications Network:

(A) the transmitting Reporting Member shall record:

(i) the fact that the order was transmitted manually,

(ii) the order identifier assigned to the order by the Reporting Member,

(iii) the market participant symbol assigned by the Association to the Reporting Member,

(iv) the market participant symbol assigned by the Association to the member to which the order is transmitted,

(v) the date the order was first originated or received by the Reporting Member,

(vi) the date and time the order is transmitted,

(vii) the number of shares to which the transmission applies, and

(viii) for each order to be included in a bunched order, the bunched order route indicator assigned to the bunched order by the Reporting Member; and

(B) the receiving Reporting Member shall record:

(i) the fact that the order was received manually,

(ii) the order identifier assigned to the order by the member that transmits the order,

(iii) [(ii)] the market participant symbol assigned by the Association to the transmitting Reporting Member, and

(iv) [(iii)] other information items in Rule 6954(b) that apply with respect to such order, which must include information items (1), (2), (3), (6), (7), (8), (10), (11), (12), (13), (15), and 16).

(6) No Change.

(d) No Change.

6955. Order Data Transmission Requirements

(a) through (c) No Change

(d) Exemptions

(1) Pursuant to the Rule 9600 Series, the staff, for good cause shown after taking into consideration all relevant factors, may exempt, subject to specified terms and conditions, a member from the order data transmission requirements of this Rule for manual orders, if such exemption is consistent with the protection of investors and the public interest, and the member meets the following criteria:

(A) the member and current control affiliates and associated persons of the member have not been subject within the last five years to any disciplinary action, and within the last ten years to any disciplinary action involving fraud;

(B) the member has annual revenues of less than \$2 million;

(C) the member does not conduct any market making activities in Nasdaq Stock Market equity securities;

(D) the member does not execute principal transactions with its customers (with limited exception for principal transactions executed pursuant to error corrections); and

(E) the member does not conduct clearing or carrying activities for other firms.

(2) An exemption provided pursuant to this paragraph (d) shall not exceed a period of two years. At or prior to the expiration of a grant of exemptive relief under this paragraph (d), a member meeting the criteria set forth in paragraph (d)(1) may request, pursuant to the Rule 9600 Series, a subsequent exemption, which will be considered at the time of the request, consistent with the protection of investors and the public interest.

(3) This paragraph shall be in effect until [five years from the effective date of the proposed rule change].

* * * * *

9600. Procedures for Exemptions

9610. Application

(a) Where to File

A member seeking an exemption from Rule 1021, 1022, 1070, 2210, 2320, 2340, 2520, 2710, 2720, 2810, 2850, 2851, 2860, Interpretive Material 2860-1, 3010(b)(2), 3020, 3210, 3230, 3350, 6955, 8211, 8212, 8213, 11870, or 11900, Interpretive Material 2110-1, or Municipal Securities Rulemaking Board Rule G-37 shall file a written application with the appropriate department or staff of the Association and provide a copy of the application to the Office of General Counsel of NASD Regulation.

(b) and (c) No Change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Regulation included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD Regulation has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

(a) Background

On March 6, 1998, the SEC approved NASD Order Audit Trail System ("OATS") Rules 6950 through 6957.⁴ OATS provides a substantially

enhanced body of information regarding orders and transactions that improves NASD Regulation's ability to conduct surveillance and investigations of member firms for violations of federal securities laws and Association rules. In addition, OATS is intended to fulfill one of the undertakings contained in the order issued by the SEC relating to the settlement of an enforcement action against the NASD for failure to adequately enforce its rules.⁵ Pursuant to the SEC Order, OATS is required, at a minimum, to: (1) Provide an accurate, time-sequenced record of orders and transactions, beginning with the receipt of an order at the first point of contact between the broker/dealer and the customer or counterparty and further documenting the life of the order through the process of execution; and (2) provide for market-wide synchronization of clocks used in connection with the recording of market events.⁶

In general, OATS imposes obligations on member firms to record in electronic form and to report to NASD Regulation on a daily basis certain information with respect to orders originated, received, transmitted, modified, canceled, or executed ("reportable events") by NASD members relating to Nasdaq Stock Market, Inc. ("Nasdaq") equity securities. OATS also requires member firms to synchronize their business clocks and to keep them continually synchronized with a specific time designated by the Association. OATS captures this order information reported by NASD members and integrates it with quote information and transaction information reported to the Automated Confirmation Transaction Service ("ACT")⁷ to provide the Association with an accurate, time-sequenced record of orders, quotes, and transactions.

In addition to NASD Rules 6950 through 6957, NASD Rule 3110 imposes recordkeeping requirements on NASD members that are obligated to record and report information to the NASD under the OATS rules. With respect to an order that is received or executed at the member's trading department, the member is required to record the identification of the registered person who received the order directly from a customer and the identification of the person who executed the order at a market maker's trading desk. In

⁵ See In the Matter of National Association of Securities Dealers, Inc., Exchange Act Release No. 37538 (August 8, 1996); Administrative Proceeding File No. 3-9056 ("SEC Order").

⁶ *Id.*

⁷ ACT is an automated system owned and operated by Nasdaq that captures transaction information in real-time.

⁴ See Securities Exchange Act Release No. 39729 (March 6, 1998), 63 FR 12559 (March 13, 1998) ("OATS Approval Order").

addition, NASD Rule 3110 requires a member to record the identification of the department of the member that originated an order that is transmitted manually to another department within a member.

The effective date for OATS requirements are set forth in NASD Rule 6957, which provides for different phases of implementation. All members were required to synchronize their computer system clocks and all mechanical clocks that record times for regulatory purposes by August 7, 1998, and July 1, 1999, respectively. In addition, the implementation schedule required that electronic orders received at the trading department of a member that is a market maker in the subject securities and those received by electronic communications networks ("ECNs") be entered into OATS as of March 1, 1999 ("Phase One"). Not all information relating to electronic orders received by market makers was required to be reported to OATS during Phase One. Information items relating to all electronic orders, however, was required to be reported to OATS by August 1, 1999 ("Phase Two").

As of December 15, 2000, the OATS rules will apply to all manual orders ("Phase Three").⁸ With respect to manual orders and all orders received by ECNs, however, the data required to be electronically recorded and transmitted to the OATS is limited to information that is expected to be readily available at the trading desk.⁹

⁸ See Securities Exchange Act Release No. 43263 (September 8, 2000), 65 FR 55661 (September 14, 2000). On March 9, 2000, NASD Regulation filed a proposed amendment with the SEC for immediate effectiveness to extend the implementation date of Phase Three from July 31, 2000 to October 31, 2000. See Exchange Act Release No. 42515 (March 10, 2000), 65 FR 14638 (March 17, 2000). The purpose of these extensions is to provide NASD Regulation adequate time to analyze and consider the proposed changes described in the current proposal, and, in particular, those affecting Phase Three recording and reporting requirements.

⁹ See OATS Approval Order, pp. 22–23, *supra* note 4. Specifically, with respect to manual orders, information item (18) (type of account for which the order is submitted) of NASD Rule 6954(b) would be required to be reported only to the extent that such information item is available. Information items (4) (identification of any department or the identification number of any terminal where an order is received) and (5) (identification of the department of the member originating an order) or Rule 6954(b) and information items under (1) (recordkeeping requirements for orders transmitted to another department within the member) specified in Rule 6954(c) would not be required to be recorded and reported with respect to manual orders. In addition, information items (4) (identification of any department or identification number of any terminal where an order is received), (5) (the identification of the department of the member that originates the order), (9) (the designation of the order as a short sale), (14) (any request by a customer that an order not be

The books and records requirements, set forth in NASD Rule 3110(h)(1)(A) and (B), pertaining to the identification of the registered representative who receives an order directly from a customer and the identification of each registered person who executes the order, became effective on March 1, 1999. The recordkeeping requirements, set forth in NASD Rule 3110(h)(1)(C), applicable to orders originated by a member and manually transmitted to another department within the member firm, will become effective on December 15, 2000.

Since the implementation of the OATS requirements, NASD Regulation staff has been closely reviewing OATS activities with the goal of identifying ways in which to enhance the effectiveness of OATS as a regulatory tool. In this regard, NASD Regulation has identified certain changes to OATS that it believes will enhance NASD Regulation's automated surveillance for compliance with trading and market making rules such as the NASD's Limit Order Protection Interpretation, the SEC's Order Handling Rules, and a member firm's best execution obligations. These rule changes will, at the same time, eliminate the reporting of duplicative information and reduce the regulatory burdens on member firms, particularly certain smaller member firms.

(b) Current Proposal

(1) Change to Time of Receipt of Order

NASD Rule 6954 requires certain identifying information to be recorded at various critical points during the life of an order. In addition to uniquely identifying the order, this information assists NASD Regulation in carrying out its regulatory responsibilities with respect to that order. In general, the required information items relate to: (1) the origin of an order (*i.e.*, in-house, customer, or another member); (2) whether the member relies upon a Reporting Agent to fulfill its reporting obligations; (3) how the order was received (*i.e.* manually or electronically); (4) the items of the order; (5) whether the order was transmitted for execution to another department within the member (other than to the trading department), to another member, or to an ECN, and how it was transmitted (*i.e.*, manually or

electronically); and (6) whether the order was modified, canceled, or executed.

electronically); and (6) whether the order was modified, canceled, or executed.

NASD Rule 6954(b) requires certain information to be recorded when an order is received or originated. For electronic orders, the proposed rule change would codify the staff's current position that the order origination and receipt time is the time the order is captured by a member's electronic order-routing or execution system. NASD Regulation believes that this definition of time of receipt is a close substitute for the time an order is received by the trading desk because routing through the electronic system to the trading desk is nearly instantaneous.

Once the OATS rules are fully phased in on December 15, 2000, manual orders, whether recorded at a market maker trading desk or at another location, will be subject to all the recording and reporting requirements. Currently, the time of receipt recorded and reported to OATS is the time the firm receives the order from a customer.¹⁰ Although the actual time a manual order is received by a firm is useful for certain regulatory purposes, it is of little value to NASD Regulation's Market Regulation Department's automated surveillance for identifying potential violations of NASD IM 2110–2 (the limit order protection rule), Rule 11Ac1–4 under the Exchange Act (limit order display rule), and NASD Rule 2320 (best execution obligations). In many instances, the more useful time for these purposes is the time the order is received by the trading desk or trading department. Accordingly, NASD Regulation is proposing to amend Rule 6954(b) to require the time of receipt to be recorded and reported by a member firm to OATS for a manual order that is fewer than 10,000 shares to be the time the order is received by the member's trading desk or trading department for execution or routing purposes. For a manual order that is 10,000 shares or greater, the time of receipt required to be recorded and reported would continue to be the time the order is received by the member from the customer.¹¹

¹⁰ If an order is received and then immediately entered into an electronic system, the time the order is captured by such system has been interpreted to be the time of receipt. See OATS Reporting Technical Specifications, Section 4.1.3.

¹¹ Because certain order handling rules may apply differently to block orders of 10,000 shares or greater, the proposed rule change defines the time of receipt differently depending on the size of the order. For example, members may attach terms and conditions to certain block orders of 10,000 shares or greater for purposes of the limit order protection rule, such orders excepted from the limit order display rule unless a customer expressly requests otherwise.

NASD Regulation believes that, for electronic orders and manual orders for fewer than 10,000 shares, the time the order is received at the trading desk or trading department is the most relevant time and will provide the best indicator for NASD Regulation's automated surveillance systems to review for compliance with applicable rules. In addition, NASD Regulations believes the proposed rule change will reduce the burden of reprogramming reporting systems for Phase Three requirements, as well as the cost of manually inputting these times for orders not directly inputted into an electronic order handling system, while still substantially fulfilling the undertakings contained in the SEC Order.

Notwithstanding this proposed rule change to the OATS rules, NASD Regulation recognizes the importance of capturing the time the order was actually received from the customer to determine if there are any inordinate delays in transmitting the order to the trading desk. In this regard, all firms must continue to capture and retain the time an order was received from a customer (if different than the time the order was entered into an electronic system) under Rule 17a-3(a)(6) of the Exchange Act.¹² This information is available to NASD Regulation staff as part of its investigatory process and is used during field examinations of member firms to determine, among other things, how promptly the firm transmits its orders for execution.

(2) Exclusion from OATS Reporting for Certain Members

Certain members engage in a non-discretionary order routing process whereby, immediately after receipt of a customer order, the member routes the order, by electronic or other means, to another member ("receiving member") for further routing or execution at the receiving member's discretion. Currently, the OATS rules require both the member with whom the order originated and the receiving member to create and report new order reports and possibly route reports. This results in the receipt of duplicative information by OATS. In such instances, therefore, NASD Regulation is proposing that the OATS rules be amended to require, in such instances, that only the receiving member report OATS data. Under the proposed rule change to NASD Rule 6951(n), a member would not be required to report OATS data regarding an order, if the following conditions are met:

(1) the member engages in a non-discretionary order routing process, pursuant to which it immediately routes, by electronic or other means, all of its orders to a receiving Reporting Member;¹³

(2) the member does not direct or maintain control over subsequent routing or execution by the receiving Reporting Member;

(3) the receiving Reporting Member records and reports all information required under NASD Rules 6954 and 6955 with respect to the order; and

(4) the member has a written agreement with the receiving Reporting Member specifying the respective functions and responsibilities of each party to effect full compliance with the requirements of NASD Rules 6954 and 6955.

In addition to eliminating the reporting of duplicative information to OATS, NASD Regulation believes the proposed rule change will reduce the regulatory burdens on members, particularly smaller members, that route all their orders to another Reporting Member by means of a non-discretionary order routing process, for execution or further routing purposes.¹⁴

(3) Capturing Routed Order Information

OATS has the capability of tracking the history of an order by linking it across firms through the use of a routed order identifier. If the order does not contain a routed order identifier, the order cannot be linked to subsequent actions, such as further routing or execution by other firms or Nasdaq systems. In this regard, the complete history of a significant percentage of orders are not tracked because the OATS rules do not require any receiving Reporting Member to capture and report a routed order identifier if the order is routed to it manually. OATS rules also do not currently require ECNs to capture and report a routed order identifier for orders routed to the ECN manually or electronically. Given the current level of participation of ECNs, the linking of these orders is essential if OATS is to capture the life cycle of orders for Nasdaq securities. Therefore, NASD Regulation is proposing new provisions to Rule 6954(c) that will require firms and ECNs to capture and report the transmitting Reporting Member's unique identifier for all routed orders. NASD

¹³ If any delay results in the routing of an order due to systems problems or other reasons, the member with whom the order originated would be required to report OATS data.

¹⁴ This exclusion would not change a member's requirement to capture and retain the time an order was received from a customer under Rule 17a-3(a)(6) or the Exchange Act. 17 CFR 240.17a-3(a)(6).

Regulation anticipates a "phase-in" period for implementation of this proposed rule change to provide adequate time for necessary systems and procedures changes.

(4) Exemptive Relief

Finally, NASD Regulation is proposing new paragraph (d) of Rule 6955 and an amendment to Rule 9610(a) to permit NASD Regulation to grant exemptive relief to certain members from the reporting requirements of the OATS rules under the procedures set forth in the Rule 9600 series.

Specifically, members that meet the following criteria would be eligible to request an exemption from the OATS reporting requirements for manual orders:

(1) the member and current control affiliates and associated persons of the member have not been subject within the last five years to any disciplinary action, and within the last ten years to any disciplinary action involving fraud;

(2) the member has annual revenues of less than \$2 million;

(3) the member does not conduct any market making activities in Nasdaq Stock Market equity securities;

(4) the member does not execute principal transactions with its customers (with limited exceptions for error corrections); and

(5) the member does not conduct clearing or carrying activities for other firms.

Under the proposed rule change, any exemptive relief granted would expire no later than two years from the date the member receives the exemptive relief. At or prior to the expiration of a grant of exemptive relief, members meeting the specified criteria may request a subsequent exemption. In addition, under the proposed rule change, NASD Regulation's exemptive authority shall be in effect for five years from the effective date of the proposed rule change.

The proposed exemptive authority will provide NASD Regulation the ability to grant relief to members meeting the specified criteria in situations where, for example, reporting of this information would be unduly burdensome for the member or where temporary relief from the rules (in the form of additional time to achieve compliance would permit the member to avoid unnecessary expense or hardship.

2. Statutory Basis

The Association believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of

¹² 17 CFR 240.17a-3(a)(6).

the Exchange Act,¹⁵ which require that the rules of an association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and, in general, to protect investors and the public interest. NASD Regulation believes that, under the proposed rule change, OATS will continue to provide a substantially enhanced body of information regarding orders and transactions and will improve NASD Regulation's ability to conduct surveillance and investigations of member firms for violations of the Association's and other applicable rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

NASD Regulation neither solicited nor received written comments.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Exchange Act. In particular, the Commission solicits comments on the propriety of the proposed time of receipt to be recorded and reported to OATS for manual orders. Currently, the time of receipt recorded and reported to OATS is the time the firm receives the order from a customer. Under the proposed rule change, this would continue to be the time of receipt for manual orders that are 10,000 shares or greater. For manual

orders of fewer than 10,000 shares, however, the NASD has proposed that the time of receipt to be recorded and reported pursuant to the OATS rules be the time the order is received by the member's trading desk or trading department for execution or routing purposes. The distinction is due to the types of problems the NASD and the Commission have encountered with manual orders of various sizes. Manual orders of greater than 10,000 shares are more likely to be subject to potential manipulation through delays in transferring the orders to a firm's trading desk or trading department. Manual orders of fewer than 10,000 shares, however, may need to be more closely examined for violations of the Commission's order handling rules. The Commission seeks comment on whether the proposed distinction between manual orders of different sizes for purposes of the proposed time of receipt is reasonable.

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR-NASD-00-23 and should be submitted by October 24, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁶

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 00-25333 Filed 10-2-00; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION (SBA)

Federal Assistance to Provide Financial, Counseling, Technical Assistance and Long-Term Training to Small Business Owners and Those Interested in Starting a Small Business

AGENCY: Small Business Administration.

ACTION: SBDC 2000 Program Announcement for FY 2001 and CY 2001.

SUMMARY: The Small Business Administration plans to issue an SBDC program announcement. SBA plans to issue an SBDC 2000 Program Announcement for FY 2001 and CY 2001 to invite applicants from Institutions of Higher Education and Women's Business Centers to establish, manage, and oversee a Small Business Development Center (SBDC) Network in the State of Michigan.

The authorizing legislation is section 21 of the Small Business Act, (15 U.S.C. 648), *as amended* by section 6 of Pub. L. 101-515.

SBA's Detroit District Office will hold a bidders conference on November 6, 2000.

SBA's Detroit District Office must receive applications/proposals by November 20, 2000.

SBA will select the applicants competitively. The successful applicant will receive an award to provide long term training, counseling and technical assistance to businesses/persons who want to start or expand a small business.

The applicant must submit a one year plan that describes the network, proposed fund raising, training and technical assistance activities. Award recipients must provide non-Federal matching funds, *i.e.*, one-non Federal dollar for each Federal dollar for the project-year. At least half of the matching requirement must be in cash. The remainder may be in in-kind or in waived indirect cost.

DATES: SBA will mail program announcements to interested parties, immediately, upon request. The Opening date will be October 3, 2000 and the closing date will be November 3, 2000.

FOR FURTHER INFORMATION CONTACT:
Eugene Cornelius, (313) 226-7240.

Johnnie L. Albertson,
Associate Administrator for Small Business Development Centers.

[FR Doc. 00-25368 Filed 10-2-00; 8:45 am]

BILLING CODE 8025-01-P

¹⁵ 15 U.S.C. 78o-3(b)(6).

¹⁶ 17 CFR 200.30-3(a)(12).

SMALL BUSINESS ADMINISTRATION**Region IV District Advisory Council;
Public Meeting**

The U.S. Small Business Administration, North Florida District Office, Jacksonville, Florida, Advisory Council will hold a public meeting from 12:00 p.m. to 2:00 p.m., October 26, 2000, located at the University Center, 12000 Alumni Drive, University of North Florida, Jacksonville, Florida, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present. For further information write or call Claudia D. Taylor, U.S. Small Business Administration, 7825 Baymeadows Way, Suite 100-B, Jacksonville, Florida 32256 (904) 443-1933.

Bettie Baca,

Counselor to the Administrator/Public Liaison.

[FR Doc. 00-25369 Filed 10-2-00; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION**Small Business Investment Company;
Computation of Alternative Maximum
Annual Cost of Money to Small
Businesses**

13 CFR 107.855 limits the maximum annual Cost of Money (as defined in 13 CFR 107.50) that may be imposed upon a Small Business in connection with Financing by means of Loans or through the purchase of Debt Securities. The cited regulation incorporates the term "Debenture Rate", which is defined in 13 CFR 107.50 as the interest rate, as published from time to time in the **Federal Register** by SBA, for ten year debentures issued by Licensees and funded through public sales of certificates bearing SBA's guarantee.

Accordingly, Licensees are hereby notified that effective the date of publication of this Notice, and until further notice, the Debenture Rate, plus the 1 percent annual fee which is added to this Rate to determine a base rate for computation of maximum Cost of Money, is 8.452 percent per annum.

13 CFR 107.855 does not supersede or preempt any applicable law imposing an interest ceiling lower than the ceiling imposed by its own terms. Attention is directed to section 308(i) of the Small Business Investment Act of 1958, as amended, regarding that law's Federal override of State usury ceilings, and to its forfeiture and penalty provisions.

(Catalog of Federal Domestic Assistance Program No. 59.011, small business investment companies)

Dated: September 27, 2000.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 00-25367 Filed 10-2-00; 8:45 am]

BILLING CODE 8025-01-P

DEPARTMENT OF STATE

[Public Notice 3426]

**Culturally Significant Objects Imported
for Exhibition Determinations:
"European Masterpieces: Six
Centuries of Paintings From the
National Gallery of Victoria, Australia"**

AGENCY: Department of State.

ACTION: Notice

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition "European Masterpieces: Six Centuries of Paintings from the National Gallery of Victoria, Australia," imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign lender. I also determine that the exhibition or display of the exhibit objects at the Cincinnati Art Museum, in Cincinnati, Ohio from on or about October 27, 2000 to on or about January 14, 2001, the Kimbell Art Museum in Fort Worth, Texas, from on or about March 18, 2001 to on or about May 26, 2001, the Denver Art Museum in Denver, Colorado from on or about June 23, 2001 to on or about September 9, 2001 and the Portland Art Museum in Portland, Oregon to on or about October 6, 2001 to on or about January 6, 2002 is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/619-6981). The address is U.S. Department of State, SA-44, 301 4th Street, SW., Room 700, Washington, DC 20547-0001.

Dated: September 27, 2000.

William B. Bader,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 00-25371 Filed 10-2-00; 8:45 am]

BILLING CODE 4710-08-U

DEPARTMENT OF TRANSPORTATION**Federal Highway Administration****Environmental Impact Statement:
Kootenai County, Idaho**

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA), 42 U.S.C. 4321; 40 CFR 1508.22; 23 CFR 771.123(a), the FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Kootenai County, Idaho near the city of Coeur d'Alene.

FOR FURTHER INFORMATION CONTACT:

Victoria Peters, Design Operations Engineer or Christy Darden, Project Manager, Federal Highway Administration, 610 East Fifth Street, Vancouver, Washington 98661, telephone 360-696-7700.

SUPPLEMENTARY INFORMATION: The FHWA, in partnership with the U.S. Forest Service, East Side Highway District, and Idaho Department of Transportation, will prepare an environmental impact statement (EIS) on a proposal to improve Fernan Lake Road also known as Idaho Forest Highway 80. The section proposed for improvement begins at Fernan Village, outside of Coeur d'Alene, and ends at Fernan Saddle for a distance of approximately 17.2 kilometers (10.7 miles).

Fernan Lake Road provides access to Idaho Panhandle National Forest (IPNF). Because it is located close to the population in Coeur d'Alene and has direct access to I-90, Fernan Lake Road has a high vehicle usage. The recreational usage creates a dangerous mix of users including bicyclists, pedestrians, cars, recreational vehicles, timber haulers, trucks and school buses along this substandard paved road.

The existing Fernan Lake Road is narrow, has numerous sharp curves, a failing subgrade, a deteriorating road surface, and a substandard horizontal alignment which limits sight distance ("blind curves"). There are no developed recreational parking areas and very few turnouts along Fernan Lake, so users park along the road,

creating a safety hazard. Safety hazards are created by a narrow road with sharp curves and a surface that is in poor condition. The reported accidents over a period of approximately five years (January 1994 to December 1998) are two to three times higher than typical for this type of road. Solutions are needed to reduce the rate and severity of accidents and to provide for the current and projected traffic demand.

The overall purpose of the project is to cost effectively improve the physical conditions and safety features of Fernan Lake Road, while minimizing adverse impacts to sensitive environmental resources. Project objectives will be based on the needs developed during the scoping process. All improvements must be consistent with the applicable guidelines from the IPNF Forest Plan, Kootenai County plans and ordinances, Idaho state regulations, and federal regulations.

Alternatives under consideration include (1) taking no action; (2) improving the existing road to meet the appropriate Idaho state design criteria; (3) improving the existing road to meet the appropriate American Association of State Highway and Transportation Officials (AASHTO) design criteria; (4) other alternatives that may be developed during the NEPA process.

Notices describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed interest in this proposal. Two public scoping meetings were held during 2000 in Coeur d'Alene, Idaho. Based in part on data collected and comments received, FHWA has determined that it will prepare an EIS on the project. Comments previously received will be utilized during the EIS. Additional interagency and public scoping activities will be conducted. The time and place of the public scoping activities will be provided in the local news media and by notice to individuals and agencies that have expressed interest in the proposal. The draft EIS will be available for public and agency review and comment. Schedules for these activities will be distributed when available this winter.

To ensure that the full range of issues related to this proposed action are addresses and all significant issues identified, comments and suggestions are invited from all interested parties. Previous comments received by FHWA have identified a number of issues such as impacts to private landowners, water quality, wetlands, and wildlife, as well as, hillside stability, placement of fill in

the lake, tree removal, and parking along the roadway. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: September 27, 2000.

Ronald W. Carmichael,

Division Engineer, Federal Highway Administration.

[FR Doc. 00-25328 Filed 10-2-00; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

September 25, 2000.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before November 2, 2000 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545-0212.

Form Number: IRS Form 5558.

Type of Review: Extension.

Title: Application for Extension of Time to File Certain Employee Plan Returns.

Description: This form is used by employers to request an extension of time to file the employee plan annual information return/report (Form 5500 series) or employee plan excise tax return (Form 5330). The data supplied is used to determine if such extension of time is warranted.

Respondents: Business or other for-profit, Not-for-profit institutions.

Estimated Number of Respondents: 335,000.

Estimated Burden Hours Per

Respondents: 33 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 185,724 hours.

OMB Number: 1545-1276.

Regulation Project Number: FI-88-86 Final (TD 8458).

Type of Review: Extension.

Title: Real Estate Mortgage Investment Conduits.

Description: Section 860E(e) imposes an excise tax on the transfer of a residual interest in a REMIC to a disqualified party. The tax must be paid by the transferor of a pass-thru entity of which the disqualified party is an interest holder.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 1,600.

Estimated Burden Hours Per

Respondents: 20 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 525 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395-7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 00-25297 Filed 10-2-00; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

September 26, 2000.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220 to be assured of consideration.

DATES: Written comments should be received on or before November 2, 2000 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545-1696.

Form Number: IRS Form 8872.

Type of Review: Extension.

Title: Political Organization Report of Contributions and Expenditures.

Description: Internal Revenue Code section 527(j) requires certain political organizations to report certain contributions received and expenditures made after July 1, 2000. Every section 527 political organization that accepts a contribution or makes an expenditure for an exempt function during the calendar year must file Form 8872, except for: A political organization that is not required to file Form 8871 or a state or local committee of a political party or political committee of a state or local candidate.

Respondents: Not-for-profit institutions.

Estimated Number of Respondents/Recordkeepers: 10,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—19 hr., 7 min.

Learning about the law or the form—18 min.

Preparing and sending the form to the IRS—37 min.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 802,000 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395-7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 00-25298 Filed 10-2-00; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Federal Law Enforcement Training Center

Meeting

AGENCY: Federal Law Enforcement Training Center, Treasury.

ACTION: Notice of meeting.

SUMMARY: The Advisory Committee to the National Center for State and Local Law Enforcement Training at the Federal Law Enforcement Training Center will meet on October 25, 2000.

The agenda for this meeting includes remarks by the Committee Co-Chairs, Karen Wehner, Deputy Assistant Secretary (LE), Department of the Treasury, and Mary Lou Leary, Acting Assistant Attorney General, Office of Justice Programs, Department of Justice; progress reports on initiatives and training programs; and presentations on collaborative programs presented by the National Center.

ADDRESSES: FLTEC Artesia Facility, 1300 W. Richey Avenue, Artesia, New Mexico.

FOR FURTHER INFORMATION CONTACT:

Bruce P. Brown, Director, National Center for State and Local Law Enforcement Training, Federal Law Enforcement Training Center, Glynco, GA 31524, 912-267-2322.

Authority: The Federal Advisory Committee Act, as amended (41 CFR Part 101-6.1015(b)).

Dated: September 26, 2000.

Denise Franklin,

Acting Director, National Center for State and Local Law Enforcement Training.

[FR Doc. 00-25329 Filed 10-2-00; 8:45 am]

BILLING CODE 4810-32-P

Corrections

Federal Register

Vol. 65, No. 192

Tuesday, October 3, 2000

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

International Trade Administration

National Institute of Standards and Technology; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

Correction

In notice document 00-24187 appearing on page 56869 in the issue of Wednesday, September 20, 2000, make the following correction:

On page 56869, in the third column, in the seventh line, "8×10¹¹" should read "8×10⁻¹¹".

[FR Doc. C0-24187 Filed X-XX-00; 8:45 am]

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER00-213-002 and EL00-22-002]

The Cincinnati Gas & Electric Company; Notice of Filing

Correction

In notice document 00-24513 appearing on page 57596 in the issue of

Monday, September 25, 2000, the docket line should read as set forth above.

[FR Doc. C0-24513 Filed 10-2-00; 8:45 am]

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00-1-003, et al.]

TransEnergy U.S., et al.; Electric Rate and Corporate Regulation Filings

Correction

In notice document 00-23065 beginning on page 54514 in the issue of Friday, September 8, 2000, make the following correction:

On page 54515, in the first column, under the heading **9. PPL Montour, LLC**, "[Docket No. ER00-3032-000]" should read "[Docket No. ER00-3032-001]".

[FR Doc. C0-23065 Filed 10-2-00; 8:45 am]

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[FRL-6871-7]

Draft Guidance Document for Nutrient Trading in the Chesapeake Bay

Correction

In notice document 00-24044 beginning on page 56576 in the issue of Tuesday, September 19, 2000, make the following correction:

On page 56576, in the third column, twelve lines from the bottom, the web

address was misspelled and is corrected below:

<http://www.chesapeakebay.net>

[FR Doc. C0-24044 Filed 10-2-00; 8:45 am]

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43229; File No. SR-Amex-00-51]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change by the American Stock Exchange LLC To Extend for an Additional 90 Days Its Pilot Program Relating to Facilitation Cross Transactions

August 30, 2000.

Correction

In notice document 00-23028 beginning on page 54572 in the issue of Friday, September 8, 2000, the date is added as set forth above.

[FR Doc. C0-23028 Filed 10-2-00; 8:45 am]

BILLING CODE 1505-01-D



Federal Register

**Tuesday,
October 3, 2000**

Part II

Department of Labor

Mine Safety and Health Administration

**30 CFR Parts 42, 47, 56, 57 and 77
Hazard Communication (HazCom);
Interim Final Rule**

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 42, 47, 56, 57, and 77

RIN 1219-AA47

Hazard Communication (HazCom)

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Interim final rule; request for comments.

SUMMARY: We (MSHA) are establishing this interim final rule entitled "Hazard Communication (HazCom)" (30 CFR Part 47) to reduce injuries and illnesses related to chemicals in the mining industry. The standard requires mine operators to assess the hazards of chemicals they produce or use and provide information to miners concerning chemical hazards by means of a written chemical hazard communication program; labeling containers of hazardous chemicals; providing access to material safety data sheets (MSDSs); and training miners. In response to the National Performance Review and President Clinton's subsequent Executive Memorandum on Plain Language in Government Writing, dated June 1, 1998, we wrote this interim final rule in a different style than the one used in the proposal. Most of the requirements in this interim final rule, however, are substantially the same as the proposed rule.

This interim final rule reflects comments received on the Notice of Proposed Rulemaking, public hearings, and the notice published in the **Federal Register** on March 30, 1999 (64 FR 15144), requesting comments on the impact of certain regulatory mandates and related Executive Orders on the proposed rule. In response to the most recent re-opening of the record, commenters requested an opportunity to address the provisions of the whole rule.

Although not legally required, we think the additional opportunity to comment on the interim final rule is appropriate given the new "plain English" format and the passage of time since the close of the original comment period. For these reasons, we are allowing the public an additional opportunity to comment. All comments received will become part of the rulemaking record. We will publish our response to the comments received during this additional comment period in the **Federal Register**.

DATES: *Effective date:* This interim final rule is effective October 3, 2001.

Comment period: Comments on this interim final rule must be received by November 17, 2000 to ensure consideration.

ADDRESSES: Comments may be transmitted by electronic mail, fax, or mail, or dropped off in person at any MSHA office. Comments by electronic mail must be clearly identified as such and sent to this e-mail address: comments@MSHA.gov. Comments by fax must be clearly identified as such and sent to: MSHA, Office of Standards, Regulations, and Variances, 703-235-5551. Send mail comments to: MSHA, Office of Standards, Regulations, and Variances, 4015 Wilson Boulevard, Room 631, Arlington, VA 22203-1984, or to any MSHA district or field office. Interested persons are encouraged to supplement written comments with computer files or disks; please contact the Agency with any questions about format.

FOR FURTHER INFORMATION CONTACT:

Carol J. Jones, Director; MSHA Office of Standards, Regulations, and Variances; 703-235-1910.

SUPPLEMENTARY INFORMATION:**I. Introduction**

We identify our hazard communication standard as "HazCom" to abbreviate the term and to help readers distinguish it from the Occupational Safety and Health Administration's (OSHA) Hazard Communication Standard (HCS). In this interim final rule, "you" refers to production-operators and independent contractors, who have the primary responsibility for complying with our standards. Where needed, we use the terms "operator" or "independent contractor" to avoid confusion.

HazCom's appearance is different from the 1990 proposed rule, which we modeled after OSHA's HCS. We have made a few substantive changes in the interim final rule where comments and information submitted to the record justified a change. Changes from the proposal are also meant to clarify intent, reduce burden, and eliminate unnecessary language and needless repetition. We have tailored provisions to better fit the mining industry. Despite the change of style, the substance of the requirements for most provisions remains the same as in the proposal. We tried to organize the standard in a way that optimized clarity, logic, and accessibility to the requirements.

When HazCom was originally proposed as part 46 in 1990, a Congressional budget rider prohibited us from expending appropriated funds to enforce training requirements at

surface nonmetal mines. The 1999 training rider, however, authorized us to expend funds to propose and promulgate a final training standard for surface nonmetal mines. We, therefore, promulgated new training standards on September 30, 1999, which address the exempted mining operations. We chose part 46 as the proper place in the Code of Federal Regulations for publication of this training rule so that it would be near our other training standards promulgated under section 115 of the Federal Mine Safety and Health Act of 1977. After publication of part 46, we determined that the proper place to publish the HazCom rule would be as a new part 47. This required us to move the existing part 47, National Mine Health and Safety Academy, to part 42 with other administrative provisions.

The following is an outline of this HazCom preamble to help you find information more quickly.

- I. Introduction.
 - A. Overview of Rulemaking.
 - B. Regulatory History.
- II. Paperwork Reduction Act.
- III. Discussion of the Interim Final Rule.
 - A. Subpart A—Purpose and Scope of HazCom.
 - B. Subpart B—Hazard Determination.
 - C. Subpart C—HazCom Program.
 - D. Subpart D—Container Labels and Other Forms of Warning.
 - E. Subpart E—Material Safety Data Sheet (MSDS).
 - F. Subpart F—HazCom Training.
 - G. Subpart G—Making HazCom Information Available.
 - H. Subpart H—Trade Secrets.
 - I. Subpart I—Exemptions.
 - J. Subpart J—Definitions.
 - K. Appendices.
- IV. Legal Authority and Feasibility.
 - A. Statutory Requirements.
 - B. Finding of Significant Risk.
 - C. Finding of Feasibility.
 - D. Petitions for Modification.
- V. The Regulatory Flexibility Act, the Small Business Regulatory Enforcement Fairness Act, and Executive Order 12866.
 - A. Alternatives Considered.
 - B. Consultation with SBA.
 - C. Compliance Costs.
 - D. Regulatory Flexibility Certification and Factual Basis.
 - E. Benefits.
- VI. Other Regulatory Considerations.
 - A. Unfunded Mandates Reform Act of 1995.
 - B. The National Environmental Policy Act of 1969.
 - C. Executive Order 12630: Government Actions and Interference with Constitutionally Protected Property Rights.
 - D. Executive Order 12988: Civil Justice Reform.
 - E. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks.

F. Executive Order 13084: Consultation and Coordination with Indian Tribal Governments.

G. Executive Order 13132: Federalism.

A. Overview of Rulemaking

MSHA's HazCom standard expresses two safety and health principles: miners have a right to know about the chemical hazards where they work and you have a responsibility to know about the chemical hazards at your mine. HazCom requires you to inform miners about chemical hazards. Chemically-related injuries and illnesses in the mining industry indicate that many operators and miners are not as aware of the presence and nature of hazardous chemicals as they should be. Injury and illness reports sent to us describe instances where miners—

- Were using inadequate or improper personal protective equipment,
- Did not know what they had been exposed to that caused their symptoms,
- Failed to follow instructions because they misunderstood or were unaware of the consequences, and
- Inadvertently misused a chemical from an unlabeled container.

We expect the HazCom program—by increasing both knowledge and awareness—to bolster good work procedures, foster safer behavior, and reduce injuries and illnesses related to chemicals. When put into effect at a mine, HazCom should encourage better hazard identification and assessment; more consistent use of personal protective equipment; more informed process decisions; and greater awareness and care when working near hazardous chemicals.

HazCom is an information and training standard about chemical hazards. To be successful in reducing accidents and injuries, your HazCom program must give miners an understanding of chemical hazards by informing them about mine processes and job procedures that can lead to chemical exposures. This can be a difficult technical subject using unfamiliar terms, scientific symbols, and complex physical laws. For the training to be credible, it must balance scientific accuracy against the miner's need to understand.

1. The Need for HazCom

Our existing standards already require you to train miners in occupational health, hazard recognition, and the safety and health aspects of tasks, among other subjects. Except at underground coal mines, you must also label hazardous materials. Other HazCom provisions, however, are not currently required for mines. For

example, currently you are not required to collect material safety data sheets (MSDSs), give copies of hazard information to miners, or keep a list of the hazardous chemicals at your mine. This rule is intended to ensure that your mine has a program that emphasizes chemical hazards.

OSHA's HCS has evolved to apply to all industries in OSHA jurisdiction since it was originally promulgated in 1983 and, consequently, it already impacts some mines. Because of the HCS, manufacturers began sending labeled chemicals and providing MSDSs with product shipments to mines. Some mine operators began labeling their products and sending MSDSs with their products to help customers meet OSHA's HCS requirements. Many operators have segments of their business in OSHA jurisdiction and have created company-wide programs that brought their MSHA properties, as well as their OSHA properties, into compliance with the HCS. Some operators began complying with OSHA requirements in anticipation of a similar MSHA standard, using the unregulated interval as a time to assimilate the requirements into their mine's standard operating procedures. Although some operators on their own initiative have established programs that meet HazCom's provisions and goals, and have integrated OSHA's HCS requirements into the cultures of their mines, most have not made that effort or fully met those objectives.

Coal mine example. In a 1997 case investigated by MSHA, an eastern Kentucky coal miner was periodically assigned to seal permanent brattices using a highly alkaline mortar. The miner had noticed after these assignments that his hands felt as if they were burning. He thought this resulted from the mortar.

Although the operator assigned the miner other jobs for a while, the burning sensation did not go away and the miner was eventually returned to brattice work. On the Friday night after the reassignment, the miner's hands were burning painfully, and the raw, irritated skin eventually erupted in angry, oozing sores. On Sunday, the miner was hospitalized and placed on an intravenous antibiotic. He spent 6 days in the hospital and missed 2 weeks of work.

During his recuperation, his physician referred the miner to a dermatologist, who asked the miner to get a copy of the mortar's MSDS in order to evaluate the problem and provide the proper treatment. When the miner asked the company for a copy of the MSDS, the safety director at first said he would

have to arrange for it and then later refused to give it to him, saying that the miner had no right to the information.

Metal and nonmetal mine example. In another recent case at a large Arizona copper mine, a tailings pond was so acidic it was damaging the system's pumps. The company hired a contractor to place lime in the pond to neutralize the acid and assigned a miner to the project, a job he had never done, and one presenting hazards the miner had never been trained for.

About 4:00 p.m., the miner, trying to get the work done, walked down the slope of the pond and stepped onto an area of lime that appeared solid. His right leg sank into the lime up to his hips and he had to put his other leg into the material before he could get out. No emergency showers were available at the pond site for washing. Covered in wet lime, the miner drove himself 2 miles to the front gate while calling for help into a two-way radio.

Through a series of unfortunate circumstances, the victim was not admitted to a hospital until 5:25 p.m. After stabilizing him, the hospital staff moved him the next day to the burn center, where he spent over a month with second- and third-degree burns over the lower half of both legs and the upper part of his right leg. He missed more than 2 months of work at the mine, returning to restricted duty while receiving a series of skin grafts.

Chemical hazards in mining. Between 1984 and 1989, the National Institute for Occupational Safety and Health (NIOSH) surveyed almost 500 individual mines covering 70 commodities and about 60,000 miners for the National Occupational Health Survey of Mining (NOHSM). NOHSM documented over 10,000 individual hazardous chemicals and mixtures of hazardous chemicals to which miners could be exposed.

Chemicals in the mining industry pose a range of hazards, from mild health effects to death. Some chemicals cause or contribute to chronic health problems, such as heart or kidney disease or cancer. The relationship between these injuries and illnesses and exposure to a chemical can be obscured by years of latency between the exposure and the onset of symptoms. Other chemicals cause acute injuries or illnesses such as dermatitis, burns, and poisonings. Some chemicals pose hazards by contributing to fires and explosions.

In considering a HazCom standard, we reviewed reports of chemically-related injuries and illnesses reported to MSHA. From January 1990 through December 1999, the mining industry

reported over 2500 chemical burns. More than 1,200 of these burns were lost work time cases, involving over 50 commodities, more than 60 job classifications, and exposures to chemicals at all sizes and types of mines. Bituminous coal mines reported the most chemical burns, and crushed and broken limestone mines reported the most in the metal and nonmetal industry. This same accident and injury data indicated more than 400 poisonings. This data takes into account only some of the acute effects reported as a result of chemical exposures and does not include the chronic effects that we know also occur.

Some operators have a comprehensive HazCom program in place; others have some elements of a HazCom program; and some have none. We intend the HazCom standard to ensure that all operators give all miners the information, training, and access needed to protect themselves from chemically-related injuries and illnesses. HazCom unifies, focuses, and clarifies existing requirements and fills voids in miner protection.

2. The Major Provisions of HazCom

Hazard determination. You must identify the chemicals at your mine and determine if they can present a physical or health hazard to miners. If you produce a chemical, such as gold, molybdenum sulfide, calcium oxide (lime), sand, and phosphates, among others, you must review available scientific evidence to determine if the material is hazardous. Some of the chemicals you produce that result from a chemical reaction, such as nitrogen oxides from blasting, may already be addressed on the MSDS for the original chemical. In this example, the original chemical is the explosive. For a chemical or mixture brought to your mine, such as diesel fuel, lubricants, solvents, and paints, you can rely on the evaluation performed by the chemical's manufacturer or supplier.

HazCom program. You must develop, implement, and maintain a written comprehensive plan to formalize a HazCom program. The program must include provisions for container labeling, collection and availability of MSDSs, and training of miners. It also must contain a list of the hazardous chemicals known to be present at the mine; how you will inform miners of the hazards of non-routine tasks and of chemicals in unlabeled pipes. If your mine has more than one operator or has an independent contractor onsite, it must also describe how you will inform them about the chemical hazards and protective measures needed.

Container labeling. A label is an immediate warning about a chemical's most serious hazards. You must ensure that containers of hazardous chemicals are marked, tagged, or labeled with the identity of the hazardous chemical and appropriate hazard warnings. The label must be in English and prominently displayed. We are not requiring you to label mine products that go off mine property though you must provide the information if a customer asks for it.

Material safety data sheet (MSDS). A chemical's MSDS provides comprehensive technical and emergency information. It serves as a reference document for operators, exposed miners, health professionals providing services to those miners, and firefighters or other public safety workers. You must have an MSDS for each hazardous chemical at your mine. The MSDS must be accessible in the work area where the chemical is present or in a central location readily accessible to miners in an emergency.

HazCom training. You must establish a training program to ensure that miners understand the hazards of each chemical in their work area, the information on MSDSs and labels, how to access this information when needed, and what measures they can take to protect themselves from harmful exposure. You may already cover some of this information in your current training program. If so, you do not have to re-train miners in topics they have already been trained in.

Making HazCom information available. You must provide miners, their designated representatives, MSHA, and NIOSH with access to the materials that are part of the HazCom program. These include the HazCom program, the list of hazardous chemicals, labeling information, MSDSs, training materials, and any other material associated with the HazCom program. You do not have to disclose the identity of a trade secret chemical except when there is a compelling medical need.

3. The Basis for the HazCom Interim Final Rule

In addition to the requirements in the Federal Mine Safety and Health Act of 1977 (Mine Act) and other applicable legislation, we based our interim final rule primarily on comments received in response to the Advance Notice of Proposed Rulemaking (ANPRM), the Notice of Proposed Rulemaking, and the public hearings. We also considered—

- The comments received in response to our recent Notice in the **Federal Register**;
- Our experience in the mining industry; and

- The related standards of other Federal agencies.

To the extent practical, the substance of our HazCom requirements is the same as that in OSHA's HCS. We developed some provisions to be consistent with other MSHA standards, such as the retention period for training records. Two areas where our standard significantly differs from OSHA's are in the inclusion of hazardous waste among the chemicals of concern and the omission of a requirement to label products going off mine property. OSHA's HCS exempts certain hazardous wastes because there are employee protections in other rules which address these hazards, such as 29 CFR 1910.120, Hazardous Waste Operations and Emergency Response (Hazwoper) and EPA's regulations under the Resource Conservation and Recovery Act of 1976 (RCRA). Because we do not have standards that address miners' exposure to hazardous waste, we needed supplemental requirements to ensure that miners working with hazardous waste understand the associated hazards and take precautions.

HazCom does not require you to label products that go off mine property. When the product leaves mine property, however, you must comply with the OSHA HCS which requires hazardous chemicals to be labeled.

With few exceptions, if your HazCom program complies with OSHA's HCS, it also will comply with this interim final rule. We will publish a Compliance Guide to help you understand the application of this rule. It will contain numerous examples, suggestions, and explanations of how we interpret the interim final rule.

B. Regulatory History

Petition for Rulemaking. On November 2, 1987, the United Mine Workers of America (UMWA) and the United Steelworkers of America (USWA) jointly petitioned us to adapt OSHA's HCS in both coal and metal and nonmetal mines and to propose it for the mining industry. They based their petition on the need for miners to be better informed about chemical hazards.

In their petition, the UMWA and USWA argued that miners deserve protection equal to that of other workers. To support their position, the petition cited an incident in which miners at an iron ore mine were experiencing adverse health effects. These miners asked the operator for MSDSs for the flotation chemicals used at the mine to determine the identity of the chemical causing the symptoms. Although the State in which the mine was located had a right-to-know law,

this law did not cover mines. Because we did not have a standard to require the operator to provide MSDSs to miners, the operator refused several times to provide the requested MSDSs. The operator finally provided the MSDSs after lengthy negotiations. The local union used the information provided in the MSDSs to discuss safeguards with the company.

The petition also specifically noted that work at both surface and underground coal and metal and nonmetal mines exposes miners to a variety of hazardous chemicals. For example, the petition stated that explosives contain organic nitrates that produce nitrogen oxides and ammonia when detonated; roof bolting systems contain plastic resins and reactants; solvents used in equipment maintenance are both toxic and flammable; and mill reagents can release hydrogen sulfide, cyanide, or other dangerous chemicals.

Preliminary rulemaking. In response to this petition, we issued an advance notice of proposed rulemaking (ANPRM) on hazard communication on March 30, 1988 (53 FR 10256). In the ANPRM, we indicated that we would use the OSHA HCS as a basis for our standard and requested specific comments on a number of related issues. We published a notice of proposed rulemaking on hazard communication for the mining industry on November 2, 1990 (55 FR 46400). We also held three public hearings in October 1991—one each in Washington, DC; Atlanta, GA; and Denver, CO. The record closed on January 31, 1992.

Public response. We received a wide variety of comments on our ANPRM and proposed rule. Commenters included both small and large mining companies; a variety of trade associations, including those representing specific minerals; State mining associations; chemical and equipment manufacturers; national and local labor unions; a member of Congress; and two Federal Agencies. There were a combined total of 121 written comments submitted in response to the ANPRM (50), the proposed rule (63), and the re-opening of the record (8), as well as oral testimony presented at public hearings.

Limited reopening of the record. While we were working to finalize this rulemaking, Congress passed several laws which affected our rulemaking procedures. These statutory mandates and related Executive Orders require us to evaluate the impact of a regulatory action on small mines;¹ State, local, and

tribal governments;² and the health and safety of children.³

In addition, we requested comments on the information collection and paperwork requirements of certain provisions of the proposal, now considered as an information collection burden under the expanded definition of “information” under the Paperwork Reduction Act of 1995.⁴

Most MSHA regulations do not require an evaluation of their impact on the environment. Health standards do, however. This was brought to our attention and we took this opportunity to remedy the oversight. We requested comments on the effect of the proposed rule on the environment because the proposal had not.⁵

We reopened the rulemaking record on March 30, 1999 (64 FR 15144) to receive comments on the impact of the proposed rule in accordance with these regulatory mandates and Executive Orders. The record closed on June 1, 1999.

Public response to limited reopening. We received seven comments, mostly from trade associations and labor organizations, on this limited reopening of the rulemaking record. The National Mining Association (NMA) urged us to reopen the rulemaking record in its entirety because the information in the record is outdated since the proposal was published on November 2, 1990. The NMA indicated this action would improve the effectiveness and quality of the HazCom standard because sectors of the mining industry that have incorporated OSHA’s HCS can provide us with their experience under such program. Consol, Inc., a large mining company, stated that we need to address in the HazCom standard recent changes in the OSHA HCS regarding electronic access to MSDSs and microfiche maintenance of these documents. The National Stone Association (NSA)

commented on the need to promulgate a HazCom standard in light of our new miner training regulations applicable to surface aggregate mines. Finally, the United Mine Workers of America (UMWA), and Jim Weeks, a consultant to the UMWA, objected to the delay in promulgating a final standard.

We disagreed with commenters on the need to reopen the rulemaking record in its entirety. Unlike general industry, the mining industry is narrowly composed of two sectors, coal and metal and nonmetal. Because of our frequent presence on mine properties, we have determined that there are no substantial changes in the mining industry which would require changes in the provisions of this final standard. Changes experienced by the mining industry since the publication of the HazCom proposal in 1990 do not rise to a level of change in “core” circumstances so material in nature as to entail a modification of the final standard. Substantive rulemaking issues and regulatory alternatives have not changed since the record closed in 1992 and, consequently, the evidence in the rulemaking record is current.

We understand commenter’s desire to provide more information regarding their experience under the OSHA HCS standard. Our rulemaking record, however, contains numerous comments concerning the mining industry’s experience with OSHA’s HCS. We have considered all these comments, and the final standard reflects the public’s recommendations where they do not undermine the ultimate issue of protecting the safety and health of miners. For example, some commenters indicated their experience regarding OSHA’s MSDS requirements and suggested that we include a provision on electronic access to MSDSs; simplify the proposal regarding the content of MSDSs; use terms that are consistent with the Mine Act instead of the OSH Act; simplify the requirements regarding inclusion of MSDSs with initial shipment of product; and require retention of MSDSs for a period of less than 30 years.

In response to these comments, the HazCom final standard provides for electronic access to MSDSs; uses terms such as “miner” and “mine operator” instead of “employee” and “employer” to be more consistent with the language of the Mine Act; streamlines and clarifies the provisions on the format and content of MSDSs; and requires the operator to keep the MSDS at the mine for as long as the chemical is known to be present at the mine, instead of 30 years as OSHA requires. While MSHA’s HazCom standard is generally consistent

Regulatory Flexibility Act of 1980, Pub. L. No. 96–354, 94 Stat. 864 (1980) (codified as amended at 5 U.S.C. 601–612).

² The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*); and Executive Order 13084, Consultation and Coordination with Tribal Governments.

³ Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks.

⁴ Pub. L. No. 104–13, 109 Stat. 163 (1995) (codified as amended at 4 U.S.C. 3501–3520). When we published the HazCom proposal, the information collection and paperwork requirements were not an information collection burden under the 1980 Paperwork Reduction Act because they were third-party disclosures. Under the Paperwork Reduction Act of 1995, agency rules that require businesses or individuals to maintain information for the benefit of a third-party or the public, rather than the government, are covered by the Act under the definition of “information.”

⁵ The National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*).

¹ The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) Amendments to the

with OSHA's HCS, we made changes to the final standard from the proposal in recognition of comments received from the mining industry concerning their experience under OSHA's HCS. These changes also recognize that the affected regulated community is smaller and more homogeneous than the industries regulated by OSHA.

On the applicability of the new part 46 training standard, we concluded that hazard communication can best be accomplished by establishing miner training requirements separate from part 46. The new part 46 training regulations are broad, covering many different training needs. Part 46 does not cover all of the specific aspects of training required under this final standard. For example, part 46 does not require training about how to read an MSDS. We developed the training aspects of HazCom to be fully compatible with existing standards.

HazCom does not require you to revise your part 46 training program or plan in order for it to be credited toward complying with the more specific hazard communication training requirements in this interim final rule. The training required under HazCom is directly applicable to the training in 30

CFR part 46 that involves hazard recognition and avoidance, mandatory health and safety standards, and warning labels. Hours spent on HazCom training can be credited to part 46, as well as part 48, training as appropriate.

II. Paperwork Reduction Act

When we published the HazCom proposal in 1990, its information collection and paperwork requirements were not an information collection burden under the 1980 Paperwork Reduction Act because they were third-party disclosures. In August 1995, the Office of Management and Budget (OMB) published its final rule (60 FR 44978) implementing the new Paperwork Reduction Act of 1995 (PRA 95). These OMB rules expanded the definition of "information" to clarify that PRA 95 also covered Agency rules that required businesses or individuals to maintain information for the benefit of a third-party or the public, rather than the government. The requirements for information collection and dissemination in HazCom are now an information collection burden because of this expanded definition. Almost all HazCom provisions fit this definition: §§ 47.11, 47.21, 47.22, 47.31, 47.32,

47.33, 47.41, 47.42, 47.43, 47.44, 47.45, 47.51, 47.52, 47.53, 47.61, 47.62, 47.63, 47.71, 47.72, 47.73, 47.74, 47.75, 47.76, and 47.77. The interim final rule also removes the labeling requirements from existing §§ 56.16004, 57.16004, and 77.208. We have submitted the interim final rule to OMB for its review and approval under § 3507 of PRA 95.

Request for public comments. Send your comments on the information collection requirements in this interim final rule to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for MSHA, 725 17th Street NW., Room 10235, Washington, DC 20503 by December 4, 2000.

Description of requirements. HazCom is primarily an information collection and dissemination rule. The annual information collection burden includes the time to inventory chemicals, determine the hazards of chemicals present, develop a HazCom program, develop or obtain labels or MSDS's as necessary, prepare training materials and train miners, and provide copies of HazCom materials. The information collection and paperwork burden encompasses each section of this part, as summarized in Table 1.

TABLE 1.—DESCRIPTION OF INFORMATION COLLECTION PROVISIONS

Provision	Information collection burden
Written HazCom Program	Prepare, administer, and review annually; determine hazards of chemicals; list hazardous chemicals at the mine.
Labels or other warnings	Prepare for hazardous chemicals produced; maintain legibility and accuracy.
Material Safety Data Sheets	Develop for hazardous chemicals produced; obtain for other hazardous chemicals; maintain availability and accuracy.
Training Program	Develop or obtain training courses and materials; conduct initial training for miners; train miners about changing hazards; administer program.
Copies of HazCom information	Distribute written HazCom program information to miners, miners' representatives, and customers when requested; distribute to other operators.

All written information can be either paper or electronic format provided that you meet access requirements.

Description of respondents. The respondents are operators, including independent contractors. The interim final HazCom rule will be applicable to all 21,166 operations under MSHA jurisdiction: 2,459 surface and underground coal mines; 3,801 coal contracting firms; 11,337 surface and underground metal and nonmetal (M/NM) mines; and 3,569 M/NM contracting firms.

We estimate that 33% of small mines and 43% of large mines (15% of coal and 19% of M/NM mines employing <20 miners, 17% of coal and 33% of M/NM mines employing 20 to 500 miners, and 100% of coal and M/NM mines employing >500 miners) have an

existing hazard communication program that complies with all or part of the provisions of HazCom. The percentage of mines complying with a specific HazCom requirement varies depending on the type of mine and the specific provision. For example, some mines label containers and keep MSDSs, but do not have a written program or provide HazCom information to miners. As a matter of corporate policy or to comply with State hazard communication or right-to-know laws, most existing HazCom programs are modeled on OSHA's HCS. For these reasons, we believe that you can adjust your existing program to comply fully with HazCom with little effort and few resources.

We assumed that most independent contractors conduct some work at

locations under OSHA jurisdiction and would have an existing hazard communication program. The contractor's program, however, may need modification for a particular mine. The magnitude of the burden for any individual mine operator or independent contractor, therefore, will vary greatly by the size, type, and location of the operation. For the purpose of estimating burden, we assumed that there are existing hazard communication programs at 65% of small (<20 miners) coal contractors, 75% of large (≥20 miners) coal contractors, 70% of small (<20 miners) M/NM contractors, 74% of large (20–500 miners) M/NM contractors, and 100% of M/NM contractors employing >500 miners.

Information Collection Burden. The greater portion of HazCom's burden accrues when you are developing and implementing the program. We

annualized this initial burden. We summarize the total first-year, start-up information collection burden for HazCom in Table 2. We summarize the

total annually recurring information collection burden in Table 3.

TABLE 2.—FIRST-YEAR INFORMATION COLLECTION BURDEN*

Provision	Number of respondents	Number of responses	Responses/ respondent	Hours/ response	Total hours	Associated costs**
Develop Program	14,239	14,239	1	12.2	173,366	\$446,826
Review Existing Program	7,620	7,620	1	6.3	48,144	125,416
Develop MSDS	3,544	3,894	1.1	2.9	10,222	26,074
Develop Training Program	13,007	13,007	1	6.9	89,196	229,257
Prepare Initial Training	13,007	13,007	1	2.0	26,014	83,632
Total		51,767		6.7	346,942	911,205

* Discrepancies due to rounding.

** Adjusted first-year costs annualized (See Regulatory Economic Analysis, Chapter VII.)

TABLE 3.—ANNUAL INFORMATION COLLECTION BURDEN *

Provision	Number of respondents	Number of responses	Responses/ respondent	Hours/ response	Total hours	Associated costs**
Update Program	14,239	14,239	1	1.7	24,767	\$911,890
New Operators Develop Program	889	889	1	13.2	11,772	437,982
Label Containers	1,717	6,712	3.9	0.20	1,343	62,309
Update MSDS	3,544	974	0.27	1.5	1,460	53,211
Maintain MSDS	14,239	637,720	44.8	0.05	31,886	568,744
New Operators Develop MSDS	889	1,019	1.1	3	3,057	113,578
Manage Training Program	13,007	13,007	1	1.7	22,299	818,776
New Operators Prepare Training	889	889	1	8.6	7,664	301,063
Training Records	13,007	187,149	14.4	0.05	9,365	167,518
Provide Info to Miners	14,239	21,961	1.5	0.20	4,395	78,817
Providing Info to Customers	14,239	233,860	16.4	0.20	46,772	832,582
Total		1,118,419		0.15	164,780	4,346,470

* Discrepancies due to rounding.

** Adjusted first-year costs annualized (See Regulatory Economic Analysis, Chapter VII.)

III. Discussion of the Interim Final Rule

In preparing this interim final rule, we attempted to address the concerns of all commenters, while ensuring that miners and operators have the information necessary to work in a safe and healthful environment.

Commenters supported widely different ideas about a HazCom rule for the mining industry. Some said we do not need one because existing standards require hazard training and labeling; others said it is vital to allow miners to exercise their right-to-know. Some said the rule would be a great burden; others said that they already have such a program. Some said they want a rule just like OSHA's; others said we should resist the temptation to duplicate OSHA's HCS. Some wanted a separate standard for the coal mining industry; others recommended that we establish separate standards for mine operators and independent contractors; others wanted a single Federal standard. Some urged us to include specific language to ensure that individual States do not promulgate or enforce any requirements related to hazard communication that conflict with the Federal standard.

Commenters recommended that the final rule be practical, strike a balance between providing too much information and too little, and allow for global harmonization with international standards.

In response to the different needs for hazard communication in the mining industry, and the broad range of comments, the provisions of the interim final rule are performance-oriented and flexible enough that operators, including contractors, can comply using a single program to meet OSHA's HCS and our HazCom standard. We considered adopting the OSHA HCS in its entirety, but some requirements of OSHA's HCS are not relevant to mining. OSHA's HCS is supplemented by other OSHA standards for which we have no parallel. OSHA, for example, has comprehensive standards specifically covering hazardous waste operations, laboratories, and medical records. To the extent practical, the substance of our interim final rule is the same as that in OSHA's HCS. We added provisions where needed, however, to give miners the same protection as employees in general industry.

A. Subpart A—Purpose and Scope of HazCom

The proposed rule included a "scope and application" section stating where HazCom applied and listing exemptions from coverage. In the interim final rule, we renamed this section "operators and chemicals covered." We moved the exemptions, which were a part of the scope in the proposal, to the end of the HazCom interim final rule so that the substantive requirements would be up front where they are more accessible. (See § 47.81 and § 47.82, Exemptions.) We will discuss exemptions later in the preamble, consistent with their placement in the interim final rule.

1. § 47.1 Purpose of a HazCom Standard

A few commenters suggested that we include a "purpose and intent" section in our HazCom interim final rule, in addition to the "scope and application" section. In response, the interim final rule adds language to clarify our intent. The purpose of HazCom is to reduce chemically-related injuries and illnesses by ensuring that you—

- Know what chemicals are at your mine;
- Determine which are hazardous and the nature of their hazards;
- Establish a HazCom program; and
- Inform each miner who can be exposed, and other on-site operators whose miners can be affected, about those hazards and appropriate protective measures.

2. § 47.2 Operators and Chemicals Covered

The proposal would have applied “to all operators who produce or use hazardous chemicals in their workplaces” and to “any chemical which is known to be present in the workplace in such a manner that employees are exposed * * *.” The interim final rule applies “to any operator producing or using a hazardous chemical to which a miner can be exposed * * *.” By modifying the language in the interim final rule, we clarify our intent that you must find out what hazardous chemicals are present at your mine and evaluate whether it is possible for miners to be exposed under normal conditions of use or in a foreseeable emergency. You do not have to determine that miners are exposed or the level of their exposure. The interim final rule is consistent with the purpose of HazCom and OSHA’s HCS. Although the proposed rule seemed to apply only where there was an actual exposure, the proposal defined “exposed” as “subjected, or potentially subjected, to a hazardous chemical * * *.” The preamble to the proposal further explained that this definition included “current and potential (accidental and possible) exposures.”

The potential for exposure to a hazardous chemical, such as diesel fuel, motor or hydraulic oils, lubricants, paints, and solvents, occurs at virtually every mining operation although exceptions do exist. While considering HazCom, we reviewed data and documents from inspections and investigations, chemical inventories, technical reports, accident and injury data, and sampling data confirming that exposure to chemicals occurs in all types and sizes of mines.

If you have already implemented a HazCom program at the mine, and that program complies with the requirements of OSHA’s HCS, it should also comply with our HazCom interim final rule. You will still have to check your existing HazCom program to make sure it complies with the interim final rule.

Potential exposure. The interim final rule retains the proposal’s intention concerning the potential for exposure.

Although we interpret the term “foreseeable” broadly in the context of this rule, we also intend HazCom to be practical.

NIOSH commented on our HazCom proposal and stated that the scope should not limit coverage of HazCom only to hazardous chemicals “under normal conditions of use or in a foreseeable emergency.” NIOSH stated that HazCom should cover all hazardous chemicals present on mine property, regardless of intended or expected exposures. Specifically, NIOSH stated that:

All workers should be informed about the nature of the risks associated with the hazardous materials found in their workplace. “When working in the presence of a hazardous material, hazards are always present even under work situations most carefully designed to eliminate risk” (NIOSH 1974a). The informed worker is prepared to minimize the impact of a hazardous materials incident. The uninformed worker is at risk of causing a hazardous materials incident or contributing to adverse health effects.

We partly agree with NIOSH’s comment. But we also agree with those commenters who expressed concern that by addressing remote or trivial hazards, the purpose of HazCom would be defeated and its effectiveness diluted. If miners are flooded with warnings about all chemical hazards, including those they perceive as remotely possible, they may be more likely to ignore warnings for the more probable hazards. We also believe that it would be unnecessarily burdensome to require you to address every conceivable chemical hazard, regardless of how unlikely that hazard is to materialize.

For example, suppose a chemical liquor, or caustic, is only present in a certain area of your bauxite mill and you have miners in this area working near pipes carrying the caustic. You have other miners who work in the farthest area of your operation who never go near the mill or the caustic. Although you could conceive of circumstances where the miner who does not work near the pipes can be exposed, it would not be reasonably foreseeable. On the other hand, you can conceive of circumstances where the miner who works daily near the pipes can be exposed. The caustic can eat through a pipe; a truck can back into a pipe; pressure can cause joints to leak. Exposure is foreseeable under these circumstances: strong caustics can eat through pipes; trucks have run into pipes before; and pressure often causes leaks.

Almost all miners are exposed to crystalline silica, but the potential for illness is related to their exposure to the

respirable fraction of dust. For example, your miners work on a concrete floor and there is silica in the concrete. If no cutting, grinding, or other activities happen to the floor that would release the respirable fraction, the potential for exposure to respirable crystalline silica is remote, and the miners are not potentially exposed to a hazard. If you must remove the floor through grinding, cutting, or crushing, the potential for exposure is foreseeable and the concrete would become a hazardous chemical subject to HazCom. Base your decision to include a chemical in your HazCom program on its hazards and the potential for miner exposure, not the risk. A chemical’s hazard is in its inherent characteristics. Risk is the likelihood of expression of that hazard in a given situation.

The interim final rule sets boundaries on the chemicals and operators covered by HazCom. It is our judgment that these boundaries provide miners the protections intended by the Mine Act without causing you to expend resources on remote possibilities.

Significance of exposures. One of the most frequent suggestions received on the HazCom proposal was that it should apply only where significant exposure to a chemical occurs. These commenters asserted that a significant exposure involved a likelihood of material impairment of health to a miner, such as when a miner was overexposed to a hazardous chemical. HazCom’s most misunderstood concept was its relationship to risk and significant exposure. Miners are frequently and seriously harmed by chemicals in their work area, but HazCom is not a risk-based health standard for measuring exposures, requiring controls, or providing personal protective equipment. Other standards address the problems of significant risk and the methods of controlling it. HazCom is an information and training standard intended to diminish risk by ensuring that operators provide miners with a level of knowledge that allows them to reduce their exposures by recognizing potential hazards and by following safe work practices.

HazCom is based on the premise that chemicals can have inherent characteristics that pose hazards and miners have a right to know what those hazards are and what their employer is doing to protect them. Many chemicals are considered to be hazardous because evidence indicates that they can threaten a miner’s physical well-being or harm the miner. Determining that a chemical is hazardous is not the same as determining that there is a significant risk of any specific physical or health

effect occurring from its use under a particular set of circumstances at the mine.

HazCom is being promulgated to *anticipate* the possibility of harm or loss from chemical exposures and provide information on ways to avoid them. It is not to regulate chemical use. It does not prohibit or limit the use of chemicals in the mining industry or prescribe controls to reduce exposures. HazCom's effectiveness is dependent on the operator's and miner's knowledge and awareness of hazards. Like any training or information standard, it is through hazard identification and awareness that HazCom addresses hazardous chemical exposure and prevents injuries and illnesses.

B. Subpart B—Hazard Determination

A hazardous chemical is any chemical whose properties can pose a physical or health hazard. It can be a pure substance (an element or chemical compound), a mixture, or an ingredient in a mixture. A hazardous chemical can be in any physical form: Solid, liquid, or gas. The likelihood of harm may be greater under some circumstances than others, but the potential to do harm is inherent in the chemical's properties. We discussed exposure and its significance under "purpose and scope" in this preamble.

HazCom's definition of hazardous chemical is consistent with the proposal and OSHA's HCS. We arranged the criteria for determining whether a chemical is hazardous in Table 47.11 and re-stated the proposal's language in a simpler way.

1. § 47.11 Identifying Hazardous Chemicals

HazCom is most effective when the criteria for determining the hazards of a chemical are applied consistently. Most physical hazards of elements and compounds are well-known and can be verified in a laboratory through testing. Physical hazards of mixtures can be determined the same way. Health hazards, however, are generally more complex, requiring studies of living systems, and can take much longer. Most health hazards of chemicals are determined through animal studies by extrapolating data from the effects on animals to predict the effects on humans.

We consider a chemical to be a physical hazard when there is scientifically valid evidence that it is combustible; a compressed gas or liquid; an explosive; a flammable aerosol, gas, liquid, or solid; an organic peroxide; an oxidizer; a pyrophoric (capable of spontaneously igniting); unstable and reactive; or water-reactive. Scientifically

valid evidence means that a study was conducted or data obtained in a highly reliable manner that takes into consideration the margin of accuracy and consistency.

We consider a chemical to be a health hazard when there is statistically significant evidence that it can cause acute or chronic health effects. Statistically significant evidence supports a conclusion with a high level of confidence, typically 90% to 95%. This means that there is only a 5% to 10% probability that the observed results are due to chance. Health hazards include chemicals that cause cancer; irritate or corrode tissues; or cause a sensitization reaction. It also includes chemicals that damage the reproductive system, the liver, the kidneys, the nervous system (including psychological or behavioral problems), the blood or lymphatic systems, the digestive system, or the lungs, skin, eyes, or mucous membranes.

Hazard determination methods. The final HazCom rule, like the proposal, includes two basic ways for determining whether or not a chemical is hazardous: One for chemicals brought to the mine and the other for chemicals produced at the mine. In every instance we reviewed, operators producing chemicals also brought chemicals to their mines. We intend that the hazard determination provisions of HazCom apply to all hazardous chemicals produced at the mine or brought onto mine property, even if they are not covered under other MSHA standards.

A number of commenters wanted the hazard determination requirement in the proposal changed to read: "Operators who ship chemicals shall determine the chemicals' hazards under conditions of intended use based on our standards in 30 CFR parts 56, 57, 71, and 75." A number of commenters wanted operators who received chemicals to determine their hazards based solely on whether the chemical is regulated by us and whether it presents a physical or health hazard under conditions of intended use.

The interim final rule does not use the word "ship" instead of "produce"; does not add the phrase "under conditions of intended use"; and does not limit the chemicals covered to those listed in our existing standards. We enforce exposure limits for chemicals listed by the American Conference of Governmental Industrial Hygienists (ACGIH) in their list of Threshold Limit Values (TLV). This list does not address all chemicals known to be present on mine property. These suggestions would have significantly changed the intent and scope of HazCom. It would emphasize

the hazards associated with the manner or process in which chemicals are used by persons off mine property, instead of emphasizing the hazards to miners.

2. Chemicals Brought to the Mine

The interim final rule is substantively the same as the proposal in its requirements for a chemical brought to a mine. Under the interim final rule, you must review the chemical's label for any hazard warning and its MSDS for more detailed information. If the label or MSDS indicates a hazard, consider it hazardous. You must then include the chemical on the list of hazardous chemicals at the mine; keep a copy of the MSDS accessible to miners; and train miners about the hazards, what you are doing to control these hazards, how to prevent or reduce the exposure, and how to protect themselves from injury or illness. If you do not want to rely on the chemical manufacturer or supplier, you may evaluate the chemical yourself. If you do, we will require you to demonstrate that you have conducted a thorough evaluation of the available evidence.

The number and types of different hazardous chemicals brought to the mine depends on the size and type of the operation. These chemicals can range from bulk raw materials, such as ammonium nitrate for use in blasting agents, to small quantities of highly hazardous chemicals used in quality control laboratories. Diesel fuel, antifreeze, motor or hydraulic oil, brake fluid, lubricants, adhesives, paints, and solvents are a few of the materials commonly brought to mining operations that would require you to ask the question: Is this a hazardous chemical?

The interim final rule requires you to make a hazard determination for each chemical at your mine to which miners can be exposed regardless of how the chemical is used. Based on your experience, we expect you to anticipate any likely misuse of the chemical, as well as accidents. This intention is further emphasized in the written HazCom program, which requires you to document how you determined the hazards of the chemicals at your mine and to make a list of those found to be hazardous. For a chemical brought to the mine, you need to review its label and MSDS. If, however, you intend to use the chemical in a manner not intended by the manufacturer or supplier, you must determine if your conditions of use create any different hazards.

3. Hazardous Waste

Hazardous waste can be either brought to the mine or produced at the

mine. Hazardous waste regulated by the Environmental Protection Agency (EPA) under the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, was exempt from the labeling and MSDS requirements under the proposal. If a hazardous waste is brought to the mine without an MSDS, however, and you could not obtain one, the proposal would have required you to determine its hazards using the same methods as if it had been produced at the mine: You would either have had to test it or have had to use any valid, available, scientific information. We expect that, in most cases, the shipping manifest or EPA permit accompanying the waste will say what it is. Even if the ingredients are listed generically, you should request that the supplier provide you with hazard information. We did not propose to exempt EPA-regulated hazardous waste from the training and other requirements of HazCom.

Because the proposal would have required you to have information on the hazards of this waste, and because there is no specific format for the MSDS, it follows that a compilation of such information could be considered an MSDS. You can use this information to develop a label. For this reason, we did not specifically exempt EPA-regulated hazardous waste from the labeling and MSDS requirements in the interim final rule. Rather, we address such waste separately in § 47.43, MSDS for hazardous waste. You must make sure that miners have the best information you can find about the waste's chemical hazards. We suggest for the sake of consistency that you put the hazard information in the same MSDS format as you use for other chemicals.

4. Chemicals Produced at the Mine

The interim final rule, as in the proposal, defines a chemical as any element, chemical compound, or mixture of these and requires you to identify what chemicals you produce at your mine. Chemicals produced at your mine include—

- Those that you mine or process to sell, such as coal or crushed stone;
- The mixtures you create, such as flotation reagents or blasting agents;
- The by-products of mining and milling, such as diesel exhaust, hydrogen sulfide, or gases from combustion or blasting; and
- The materials discarded from mining operations, such as tailings.

Every mine product is a chemical, but not all are hazardous for the purposes of HazCom. You must determine if the chemical has any harmful properties that could pose a physical or health hazard. You must determine what the

hazards and protective measures are so that you can prepare an appropriate label and MSDS. Again, HazCom does not require you to take additional protective action, as might be required by a risk-based rule. HazCom requires you to inform miners about scientifically valid evidence concerning a chemical's hazards, from either your own testing or the published results of other testing or studies.

For example, if your product is sand and gravel or crushed limestone, crystalline silica is likely to be the only hazardous component, and you are already training your miners about its hazards. Because respirable silica is so prevalent in mine products, we will be producing a generic MSDS for you to use if you do not want to prepare one yourself. You will have to ensure that your label identifies the product as containing crystalline silica, which is a human carcinogen. It is only respirable crystalline silica, however, that is a human carcinogen.

Sources for identifying hazardous chemicals. The interim final rule requires that, if you produce a chemical, you must determine its physical hazards based on available evidence or testing. You must determine its health hazards based at least on the findings of the following four recognized authorities or sources:

- Title 30 Code of Federal Regulations (30 CFR) chapter 1.
- American Conference of Governmental Industrial Hygienists (ACGIH) Threshold Limit Values (TLV's) and Biological Exposure Indices (latest edition).
- National Toxicology Program (NTP) Annual Report On Carcinogens (latest edition).
- International Agency for Research on Cancer (IARC) Monographs or Supplements.

These sources are basically identical to those listed in the proposal and the OSHA HCS, with the exception that MSHA standards regulating exposure to and use of hazardous substances are referenced instead of OSHA standards. The proposed rule intended that you would not have to look beyond these sources to determine if a chemical was a health hazard. In addition, you must consider a chemical a suspected or confirmed carcinogen if it has been evaluated and listed as such by ACGIH, NTP, or IARC. HazCom does not require you to determine whether the concentration of the chemical in the mine environment exceeds a limit recommended by one or more of these four sources. If there is a potential for harm and a potential for exposure, the chemical is hazardous for the purposes

of HazCom. You must tell your miners about the hazards that are known and give them information relevant to the safe performance of their tasks.

Some commenters recommended that we rewrite this provision to require that "operators who produce chemicals must determine the chemicals' hazards" and not specify the basis for the determination. These commenters felt that this language would make the requirement more performance oriented, would avoid incorporation by reference, and would allow operators to choose the best methods for this assessment based on the best available sources at the time of the assessment. Although the hazard determination criteria rely on the findings of respected and authoritative scientific organizations, these are minimal requirements. The interim final rule allows and encourages you to use the best methods and sources available.

Using ACGIH, NTP, and IARC to determine if a chemical is hazardous. Many commenters strongly opposed including ACGIH, NTP, or IARC in the hazard determination section of the interim final rule. These commenters also objected to our use of IARC and NTP publications as authoritative sources for identifying certain chemicals as carcinogens. Some of these commenters felt that these organizations may identify a substance as a possible human carcinogen based upon the results of a single animal study and that animal studies alone should not be relied on to identify human carcinogens. Others felt that these organizations only considered positive studies (those showing an adverse health effect) and not negative studies (those that were inconclusive or did not show a health effect) when determining that a chemical is a carcinogen or a suspected carcinogen.

Commenters opposed our reliance on an automatic trigger, such as a hazard determination made by one of these organizations, to deem a chemical as hazardous without considering the risk posed in a given situation. One commenter stated that any reference to ACGIH, NTP, or IARC in the rule is inappropriate because these institutions make determinations based on "strength of evidence analysis" and defer "weight of evidence determinations" to regulatory authorities. This commenter felt that, as in our proposed air quality rule, we should adhere to the guidelines of the Office of Science and Technology Policy (OSTP) because HazCom ultimately would reference our final air quality standard. OSTP guidelines address the use of "strength of evidence" and "weight of evidence" analysis in quantitative risk assessment.

Most commenters on our use of these publications opposed such use, stating that including references to these would be an incorporation-by-reference without following the proper rulemaking procedures. They stated that ACGIH's, NTP's, and IARC's decision-making processes are deficient because they restrict public or peer input. They further stated that the absence of public comment and external peer review raises significant questions regarding the quality of any science-based decision-making process. These commenters added that our rulemaking, because it goes through an established process, provides the only basis for establishing valid references for hazard determination purposes.

Some commenters also strongly objected to referencing either the latest edition or subsequent monographs or supplements of these sources because such references fail to advise the regulated community of the standard of conduct to which they are expected to conform. They commented further that we may only incorporate-by-reference materials in existence at the time we promulgate a final rule.

In response to these comments, we wish to re-emphasize that HazCom is not a risk-based rule. A risk-based rule requires us to limit a miner's exposure to a toxic substance or harmful physical agent. This is an information-providing standard to ensure that operators are aware of potential hazards so that they can take appropriate actions to train miners and provide them with information about ways the operator, miners, and others can protect themselves from these hazards. We believe that miners have a fundamental right to know about the hazards in their work area and that operators have a fundamental duty to provide this information. For example, warnings concerning the presence of a radiation source or high-voltage electricity are commonplace, whether or not a person is likely to be exposed or injured. We address risk assessment and risk management in other standards.

Referring to IARC, ACGIH, and NTP documents, in one sense, does incorporate them by reference. We refer to these sources because they contain lists of known hazardous chemicals. Using these lists as a screening tool reduces the resources you would otherwise have to devote to determining if a chemical is hazardous and poses no increased compliance obligations on you.

The use of these references was supported by some commenters because the sources are renowned scientific authorities. Using the latest editions of

the referenced sources of information to establish that a chemical is hazardous is appropriate because it contains the most recent information. We also believe it will be easier for you than requiring a continual, exhaustive literature search, conducting your own chemical testing, or trying to locate a document that is outdated or out-of-print.

If the commenters objecting to the use of these references meant to address whether or not the chemicals are known to be hazardous, the chemicals are listed in the four sources because scientific studies have indicated that they are hazardous. We expect most hazardous chemicals produced at mines to be listed. Other sources not cited in the proposal or interim final rule also can provide valuable information. You can check other reputable sources of scientific information, such as the NIOSH "Registry of Toxic Effects of Chemical Substances," the NIOSH "Pocket Guide to Chemical Hazards," OSHA standards, or chemical databases on the internet.

The alternative to using these four sources as a screening tool would be for you to conduct a thorough search of available literature to determine if the chemical is hazardous in addition to finding any statistically significant, scientifically valid studies that report the chemical's hazards. By using these sources as a screening tool, we intend to minimize the number of literature searches and, thus, the burden.

Using ACGIH, NTP, and IARC to determine a chemical's hazards. If the commenters objecting to the use of the references meant to address the nature of the harm, the circumstances under which the chemical can cause harm, or the level of exposure at which harm becomes likely, we recognize that there may be conflicting information in the scientific literature. We agree that relying solely on the information from these four sources may not be sufficient to determine the health hazards of a chemical. Except for identifying certain chemicals as either carcinogens or suspected carcinogens, these sources contain little specific information on the types of health hazards posed.

Some commenters stated that it would be a great burden on the mining community to find out if recent scientific studies show their product to be a carcinogen or other type of chemical hazard. Although determining the hazards of a chemical you produce could be more time consuming, we do not believe that it is overly burdensome, infeasible, or impractical. An entire segment of the publishing industry exists to inform the mining industry about new production equipment,

legislative and regulatory affairs, commodity pricing, changes in construction specifications, bid proposals, and scientific studies that can affect the commercial value of mining products. We expect that the media, trade associations, or unions will also provide the mining industry with any significant new information concerning the hazards of their products.

Proposed Table 1. To simplify your access to the information from these sources, we compiled a table of all the chemicals listed in them and included this table in the proposal. The table indicated which of the four sources would give you more information about a chemical's health hazards and carcinogenicity. Operators could use the proposed table to determine quickly if the chemical they produced was a health hazard rather than having to refer to the four sources. We thought this would save resources if the chemical was not hazardous. We intended to spare operators from the need to look beyond this table to determine whether a chemical posed a health hazard. We had intended to update this table as needed.

Several commenters agreed that we should allow operators to use proposed Table 1 to determine if the chemicals they produce are hazardous. One of these commenters felt that we should publish this table as an appendix to the rule and that it should state explicitly that operators may use this table to determine whether a chemical is a health hazard rather than having to refer to the four sources. Another of these commenters suggested that we include Chemical Abstract Service (CAS) registry numbers in the table to help operators identify the chemical.

Some commenters asked that we not include the table in the final rule. One commenter felt that the average person would find this list of hazardous chemicals difficult and impractical to use. Others expressed concern that the list may not indicate all the potentially hazardous materials produced or used at the mine and favored the OSHA HCS's one-study approach.

One commenter objected to the proposal's reference to a table in the proposed air quality standard before we published the air quality standards as a final rule. Some commenters supported our intention to reference the final air quality standards in the hazard determination provision. That support, however, was contingent upon our establishing permissible exposure limits (PELs) at levels that prevent material impairment of health or functional

capacity. These commenters further stated:

PEL's and carcinogens validated through the rulemaking process will enable operators who ship chemicals to evaluate whether those chemicals present a health hazard under conditions of intended use. When proposed 30 CFR Parts 58 and 72 are validly promulgated, MSHA should amend proposed 30 CFR Part 46.3(a) to incorporate those provisions.

Although the interim final rule continues to reference NTP, IARC, and ACGIH, it does not include a table of hazardous chemicals. Upon further consideration, we concluded that the list will quickly become outdated as new hazardous chemicals come on the market or new information becomes available, and we could not readily update it. The constant need to update the table would reduce the effectiveness of HazCom because the update would require rulemaking. Instead, we will put a list of chemicals known to be hazardous in the Toolbox that supplements the Compliance Guide for this interim final rule. We intend to place both of these references on our website and provide links to other websites, such as university collections of MSDSs. Access to internet news services, libraries, and databases will allow you to obtain the most recent and reliable information soon after it becomes available.

5. Mixtures Produced at the Mine

The best way to determine the hazards of a mixture is to test the mixture as a whole. You would then use the results of that testing to make a determination as to whether or not the mixture poses a hazard and the nature of the hazard. We recognize that most operators do not have the facilities and equipment to conduct this testing.

For mixtures not tested as a whole, the interim final rule establishes the same criteria as the OSHA HCS (and as proposed) for determining the hazards of the mixture based on its ingredients. You must use available scientifically valid evidence to determine the mixture's physical hazards and rely on available health hazard information for the mixture's ingredients to determine its health hazards.

- You must conclude that the mixture is a health hazard if at least 1% of the mixture is a chemical that is a health hazard.

- You must conclude that the mixture is a carcinogenic hazard if at least 0.1% of the mixture is a chemical that is a known or suspected carcinogenic hazard.

Determining the hazards of mixtures. A number of commenters wanted the

final rule to allow you to determine the hazards of mixtures of chemicals in the same way you would determine the hazards of individual chemical compounds or elements, *i.e.*, under conditions of intended use. They believed that mixtures should not be treated differently from other chemicals, although they may present additional health or physical hazards. These commenters stated that you should—

- (1) test the mixture as a whole;
- (2) if not tested as a whole, determine whether a component of the mixture presents a health hazard under conditions of intended use and if it constitutes a physical hazard; or
- (3) assume that a component presents a health hazard under conditions of intended use and that the mixture presents the same hazard, and use whatever scientifically valid evidence is available on the components of the mixture to determine the mixture's physical hazards.

Several commenters objected to the requirement that if a mixture has not been tested as a whole, you must assume that it will pose the same health hazards and carcinogenic hazards as each of its components. Other commenters recommended that the health hazards of mixtures be based on either experimental evidence or weight of experience and, if known, dosage and exposure. Others argued that the concentration levels of 1.0% for hazardous components of a mixture, and 0.1% for carcinogenic components, had been chosen arbitrarily and that there are no studies showing relevance to these levels with regard to health hazards.

Although we did not choose these levels arbitrarily, we agree that they are not based on specific scientific studies. The interim final rule sets concentration levels of 1.0% for hazardous components of a mixture and 0.1% for carcinogenic components, to be consistent with OSHA's HCS. By being consistent, HazCom reduces your burden by allowing you to use the label and MSDS for hazardous chemicals brought to the mine.

Trace ingredients. The proposal stated that, if you have evidence indicating that a component of the mixture could be released in concentrations that would exceed an established MSHA PEL or ACGIH TLV, or could present a health risk to miners, you must assume that the mixture presents the same hazard. A number of commenters opposed the proposal's reference to the ACGIH TLVs and suggested that the final rule reference only MSHA health standards. Commenters expressed concern that the resources spent on determining the

potential release of a hazardous trace component of a mixture dilutes the resources available to address real hazards. We contend, however, that if a trace ingredient can be released from the mixture at concentrations that can pose a health risk to miners, such as concentrations exceeding its PEL or TLV, this trace component is considered a hazard.

Another commenter recommended that the final rule be more performance oriented and suggested that we reword this section to state:

If the operator has reason to believe that lesser amounts than listed in item (2) could reasonably present a health risk they will be assumed to present the same hazard.

In response to comments, we used more performance-oriented language in the interim final rule. It requires you to assume that a mixture presents the same hazard as a component if you have evidence that the component could be released from the mixture in a concentration that could present a health risk to miners.

For example, the MSDS may indicate that a particular trace component reacts with other components, diffuses into the packaging, or evaporates over time. In this example, if the trace component is hazardous, you must inform miners about this information and its implications for them, and comply with the applicable HazCom provisions.

We do not intend that you conduct research for chemicals brought to the mine; however, you must obtain an MSDS for them to determine whether or not a trace component can be released from the mixture in a hazardous concentration. Our intent is that, if you determine the trace ingredient to present a hazard, then you must include this information in your HazCom training. However, you must determine potential hazards from trace ingredients in hazardous chemicals you produce, including mixtures and by-products of mining activities. This is consistent with MSHA's HazCom proposal and OSHA's HCS.

The interim final rule eliminates unnecessary language but retains generally the same requirement as the proposal. This provision recognizes that even trace components of a mixture could cause harm if a sufficient quantity is released from the mixture.

Crystalline silica. A number of commenters expressed concern that IARC has designated respirable crystalline silica as a probable human carcinogen. Several commenters were concerned that the requirements for determining the hazards of mixtures that had not been tested as a whole did

not take into account that a chemical is hazardous only when it is encountered in a specific physical state or form. Specifically, they felt that the proposed rule would have required you to determine that any untested mixture that contains 0.1% or greater of crystalline silica is carcinogenic, even when the concentration of respirable crystalline silica in the mixture is less than 0.1%. They pointed out that IARC's Monograph No. 42 and Supplement 7 and NTP's proposal to add this substance to its list in its 6th Edition address only the respirable crystalline form of silica as a human carcinogen and not other forms of crystalline silica.

We agree that it is the respirable form of crystalline silica that is designated as a human carcinogen in the sources listed in the interim final rule. Therefore, if the mixture contains 0.1% or greater of crystalline silica, you must determine the percentage that is respirable or capable of being liberated. Any required label and MSDS for products containing concentrations of 0.1% or more of respirable crystalline silica must indicate this potential health hazard. This is consistent with OSHA's HCS. HazCom also requires you to inform miners about the carcinogenic hazard from exposure to respirable crystalline silica.

Physical hazards. Comments on the proposal indicated that you may find it difficult to categorize the physical hazards of some mixtures because of the stratification or deterioration that may occur in these mixtures during storage and handling. To ensure that all hazards of a mixture are properly addressed, this commenter felt that we should require you to use persons who are qualified by education, experience, and training to determine the hazards of a mixture with respect to its use in mines. We expect that most of the information necessary to determine the hazards of a mixture are available in MSDSs or other publications. Because you are the person responsible for making this determination, and often the most qualified, we expect that you will make the determination yourself or select a competent person to do it.

The proposed rule stated that if a chemical is not tested as a whole, you must use "whatever" scientifically valid evidence is available to determine the mixture's physical hazard. The word "whatever" was removed from the interim final rule at the request of commenters.

6. Hazardous Chemical

One commenter felt that "chemical" may be interpreted restrictively to mean

that only the chemicals you produce require a hazard determination. This commenter felt that we should state clearly that all mining products, including minerals, ore, and miscellaneous materials, require a hazard determination. Another commenter recommended that we use the term "hazardous material" rather than "hazardous chemical" because operators and miners are more likely to associate that term with minerals, ores, and other materials that occur naturally.

We use the term "hazardous chemical" in HazCom to be consistent with its use in OSHA's HCS. It is used by a wide variety of industries and has been the subject of much clarification in the 15 years since OSHA promulgated its HCS. We believe that the definition of "chemical" in the proposed and interim final rules is more widely applicable and less open to misinterpretation than the alternatives suggested.

C. Subpart C—HazCom Program

All mines must have a written HazCom program, even if it only documents that you looked at each chemical at the mine, made a hazard determination, and found none to be hazardous. The written program does not have to be lengthy or complicated, and some operators may be able to rely on existing HazCom programs to comply with the requirements of the interim final rule. As mining processes change and as new chemicals are brought onto mine property, you must update your written program to reflect these changes.

1. § 47.21 Requirement for a HazCom Program

This section of the interim final HazCom rule is substantively the same as the proposal and consistent with OSHA's HCS. It requires you to develop, establish, and maintain a written HazCom program. You must ensure that you have an effective method to communicate hazards to miners and other operators at the mine if their miners can be exposed to your hazardous chemicals. You must also retain the written program for as long as a hazardous chemical is known to be at the mine and exposure is possible.

The scope of HazCom, § 47.2, clearly states that the interim final rule applies to all operators with miners who can be exposed to a hazardous chemical "under normal conditions of use or in a foreseeable emergency." The scope applies to all sections of HazCom and all operators at a mine, including contractors. Therefore, we did not need to repeat the language of the scope in

the requirements for the contents of the written program.

You must make the written program available to miners, their designated representatives, and MSHA and Department of Health and Human Services (HHS) personnel. In the interim final rule, the provisions on access and copies are in a new, separate subpart on making HazCom information available.

Generic programs. Some commenters stated that development of the written HazCom program was beyond the capabilities of most operators and would impose a technological and financial burden. Other commenters suggested that we develop a generic written HazCom program for use as an example.

You are responsible for developing a HazCom program for the chemicals that you produce or bring to the mine. Your written program must include all the information that you need—

- To implement the HazCom program;
- To provide hazard information to miners so that they will know what is expected and can participate in supporting the protective measures in place; and
- To ensure that other operators at the mine receive the HazCom information they need.

Although the development and implementation of a HazCom program may pose a technological and financial burden on some small operators, we determined that the interim final rule is feasible. We discuss the issue of technological and economic feasibility in the Regulatory Economic Analysis (REA) for this rule. This preamble includes a summary of the REA as Section IV. Of this preamble. The REA is posted on our website (www.msha.gov). You can download it or request a hard copy from the MSHA Office of Standards, Regulations, and Variances at the address in the front of this preamble.

To relieve the burden for small operators, we have planned an extensive outreach effort, developed a wide variety of compliance aids, and delayed the effective date of the rule for 1 year. As part of these efforts, we will provide several examples of a written HazCom program in the HazCom Toolbox for this rule. You can adapt the programs developed to meet OSHA's HCS because the two standards are similar. You also may obtain assistance from organizations that have developed generic guides to meet OSHA's HCS. The availability of generic programs reduces your technical and financial burden.

2. § 47.22 HazCom Program Contents

Under the interim final rule, like the proposal, your HazCom program has to describe how you meet the HazCom standard for hazard determination, labels and other forms of warning, MSDSs, and training. It also must include a list of the hazardous chemicals that you produce or bring to the mine and use the same identity for the chemical on this list, the label, and the MSDS.

Exchanging HazCom information.

Where more than one operator works at a mine, your HazCom program also has to describe—

- How you inform these other operators about the chemical's hazards and any protective measures for both normal work and foreseeable emergencies;
- How you provide other operators with access to your written HazCom materials, especially MSDSs; and
- How you identify hazards on labels and other warnings (the system or symbols you use).

Several commenters expressed concern about how information would be exchanged between operators. One commenter wanted the final rule to give the primary operator at the mine the latitude to determine how to exchange information. Another commenter wanted us to prescribe how operators exchange information.

The interim final rule deliberately uses performance-oriented language to give you the flexibility to establish how to exchange information with other operators and tailor your written program. At many mines, contractors, service personnel, and production miners are exposed to hazards of chemicals from many sources. For example, when independent contractors bring hazardous chemicals onto mine property, it is their responsibility to provide the primary operator and other operators (such as other independent contractors at the same site) with a written plan containing information about those chemicals. Likewise, it is the responsibility of the primary operator to inform these independent contractors about the chemical hazards at the mine. A systematic and orderly transfer of information ensures that all miners are informed. Specific, detailed requirements could reduce flexibility and become unnecessarily burdensome.

Hazard determination procedures.

One commenter wanted the final rule to require you to describe, in writing, the procedures you use to determine the hazards of the chemicals you evaluate and to maintain these written procedures. This commenter stated that

these detailed written procedures would be a valuable source of information for workers, their representatives, and the government. This commenter also stated that such a record is the means to determine if you are following procedures to assess the hazards associated with a chemical's inherent properties and not how you use it. Another commenter said that we do not need to know the basis of your hazard determination.

The interim final rule requires that your HazCom program include how you are putting the provision for hazard determination into practice at your mine. This requirement is performance oriented; it does not specify format or criteria. Although we agree with commenters that detailed procedures are valuable, HazCom does not require them. We expect your description of your hazard determination procedures to be sufficient to allow others to understand how you made the determination.

Hazardous chemical list. The interim final rule requires you to compile a list of hazardous chemicals and maintain it for as long as a hazardous chemical is at the mine. You are responsible for listing only the hazardous chemicals that you produce or bring to your work areas. The list, or inventory, of hazardous chemicals is a quick reference so that you, miners, other operators working at your mine, and MSHA and HHS personnel can see what hazardous chemicals are present. It also must use a chemical identity that permits cross-referencing between the list, a chemical's label, and its MSDS. For example, if a chemical is identified by a trade name on the MSDS or the label, the list must be indexed and the chemical identified using the same trade name.

You can compile the list for the mine as a whole or you can compile lists for individual work areas. For example, if few chemicals are used in one work area, such as a mine's quarry, and many are used in another work area, such as its shop, lists for the individual work areas would avoid confusing the miners in the quarry who would have no exposure to most of the chemicals that would be on a comprehensive list. You are in the best position to judge the most effective and efficient way to maintain this list. In maintaining this list, you must keep it up-to-date, whether for the whole mine or a specific work area.

D. Subpart D—Container Labels and Other Forms of Warning

Labeling containers of hazardous chemicals is a major provision of HazCom. A label is an immediate source

of information about a hazardous chemical in the work area, providing the identity of the chemical and a brief summary of the chemical's most serious hazards. The labeling requirements in the interim final rule are substantively the same as in the proposal and consistent with OSHA's HCS. Labels that comply with OSHA's HCS will meet HazCom's requirements.

The proposed rule contained the labeling exemptions under the "Scope and Application" and again under "Labels and Other Forms Of Warning." In response to comments, we eliminated this repetition. We also put the labeling exemptions in a table, so that they are visually more accessible, and restated the proposal's provisions using clearer language. We moved the table to a separate Exemptions subpart near the end of the rule rather than placing them in the "Scope" section at the front of the rule. Except for "raw materials being mined or processed while on mine property," the chemicals listed are exempt from labeling under HazCom because they are covered by the labeling requirements of other Federal agencies. These exempt chemicals, therefore, are already labeled when you receive them at the mine. We will discuss these exemptions in detail later in the section called "Exemptions from Labeling" (§ 47.82).

The proposal contained provisions addressing a miner's and designated representative's right to examine the labeling information and have a copy without cost. In response to comments, we consolidated HazCom's provisions on access and cost for copies in a new, separate subpart, Making HazCom Information Available (§ 47.61 through § 47.63).

The interim final rule does not include proposed § 46.5(d), which would have required you to ensure that the label for a hazardous chemical complies with the labeling requirements in an MSHA substance-specific standard, rather than the labeling requirements in HazCom. We do not currently have a substance-specific standard that requires labeling. Upon consideration of the comments, we determined that this provision was premature. If we promulgate such a standard, we will reconcile any differences from those in HazCom.

1. Labeling Requirement in General

Among those commenters supporting a HazCom labeling requirement, many urged us to be consistent with OSHA's HCS. Several of these commenters, especially those with operations in both mining and general industry, said that it would be extremely burdensome if they

had to comply with two significantly different requirements. For example, they said that it would be a great burden if you had to re-label incoming containers of hazardous chemicals to meet unique MSHA requirements. The interim final rule is consistent with the proposal, as well as OSHA's HCS. Labels that comply with OSHA's HCS will meet our labeling requirements because HazCom requires the same information on a label as OSHA's HCS. Likewise, we expect that labels meeting MSHA's HazCom criteria will meet OSHA's requirements for labels under its HCS.

Among those commenters generally opposed to labeling requirements under HazCom, many stated that our existing labeling standards are adequate and HazCom is redundant. Other commenters stated that they already are providing labeling information and MSDSs consistent with OSHA's standard because their customers are asking for them. By unifying labeling requirements for hazardous chemicals in HazCom, we intend to clarify requirements for all mines and to help you understand your compliance responsibilities.

2. § 47.31 Requirement for Container Labels

The interim final rule, consistent with the proposal, requires that each container of a hazardous chemical be labeled, tagged, or marked with the identity of the hazardous chemical and appropriate hazard warnings. You should only have to deal with three categories of labels: labels on containers of hazardous chemicals brought to the mine; labels on mixing, storage, or transport containers on mine property; and labels on the containers that you use to ship a hazardous chemical that you produce.

Existing container labels. MSHA believes that hazardous chemicals brought to the mine will arrive with labels or labeling information. We expect that the label on the original container of a hazardous chemical provides adequate information about its hazards. The Environmental Protection Agency (EPA), the Consumer Product Safety Commission (CPSC), OSHA, and other Federal agencies have rules addressing the labeling of hazardous chemicals. For this reason products or chemicals subject to their standards are exempt from labeling under HazCom.

Commenters' suggestions about label content and format indicated that they perceived the proposed rule as requiring much more operator labeling than we intended. Some seemed to think that we required operators to evaluate and label

containers of hazardous chemicals brought to the mine. One commenter pointed out that manufacturers may not identify new information on the label and MSDS they provide and stressed that operators should not have to update existing labels.

The interim final rule also contains exemptions from labeling. The interim final rule does not require you to re-label containers of hazardous materials that are labeled in accordance with other Federal standards or are otherwise marked or tagged with the required information. You are not responsible for inaccurate information on a label prepared by the chemical's manufacturer or supplier, which you accept in good faith. We do not expect, and HazCom does not require, you to update the hazard warnings on labels you did not prepare. We do expect, however, that as you replace your inventory, you will do so with containers already labeled by the manufacturer with the new information. If the manufacturer sends you a new label with instructions to replace the existing label, you must do so.

Labels on mine products. Commenters expressed concern that some operators might be unable to prepare the label for their mine's products because they lack the technical knowledge to do so. You should already know the hazard information for the chemicals produced at your mine because our existing standards require you to label hazardous materials and train miners about the safety and health aspects of their job. While underground coal mines are not required to label hazardous materials, they do conduct miner training. In the HazCom Toolbox, we will provide language that you can copy for labels for hazardous chemicals commonly produced at mines, such as respirable crystalline silica and ammonium nitrate-fuel oil (ANFO) mixed on mine property.

A commenter asked that we clarify whether the requirement to update the label with significant new hazard information within 3 months applied to small quantities of hazardous chemicals in transfer containers. The availability of significant new hazard information on a hazardous chemical is a relatively infrequent occurrence. Most new information confirms, clarifies, or expands knowledge about the hazards already known. If you have to label the container of a hazardous material, it is our intent that you ensure that the label is accurate and update the label when you become aware of significant new hazard information.

Maintenance. Some commenters stated that labels would be difficult to

maintain in a mining environment or that they would be difficult for miners to read and understand. Although it may be difficult to maintain labels in some areas of the mining environment, these labeling requirements are realistic and achievable. OSHA's HCS provisions are successfully met at heavy and highway construction sites as well as at tunneling operations, situations that are comparable to mining sites. Many of the containers coming onto mine property will have permanent labels affixed, suitable for use in the mining environment, and effective training will help miners to understand the labeling information.

HazCom requires you to check the label on a chemical brought to the mine to determine if it is hazardous so you will know whether you need to obtain and keep an MSDS, list the chemical on the list of hazardous chemicals, and train miners about the chemical. You also must ensure that the labels and other forms of hazard warning are legible. You do not have to re-label these containers unless there is no label or it is unreadable. Likewise, you must not remove or deface the labels on hazardous chemicals brought to the mine unless you immediately mark the container with the chemical's identity and its hazards. You must also ensure that the container remains labeled as long as you use it to contain a hazardous chemical.

3. § 47.32 Label Contents

HazCom requires that you label containers of the hazardous chemicals you produce. Although the hazard warnings on the labels should be concise and easy to see, they also must convey the chemical's identity and its physical and health hazards. The label, tag, or other marking that you prepare must communicate enough information to users of your product and other employers so that they can recognize the hazards and make correct decisions about safe procedures and protective equipment. We do not intend the label to be the only or most complete source of information on the hazardous chemical.

We recognize that it may not be feasible to include every hazard on the chemical's label that is listed in the MSDS. We expect, however, that you will address all hazards in the training program. The selection of hazards to be highlighted on the label will involve some assessment of the weight of the evidence regarding each hazard. This does not mean, however, that only acute hazards are to be covered on the label or that well-substantiated hazards can be omitted from the label because they

appear on the MSDS. As one commenter stated:

We urge you to consider the possible effects of a world in which every conceivable threat is labeled, stickered, highlighted until the senses are saturated and the desired effect of the entire message is lost. We are rapidly creating such a world, and we caution you against needlessly furthering this unnerving trend.

For those chemicals posing multiple hazards, we expect you to prioritize the hazards and use that as the basis for the warnings. At a minimum, you must specify all serious hazards on the label. For example, if chromium (VI) in a welding fume is carcinogenic, causes liver and kidney damage, and blood abnormalities, as well as respiratory irritation, perforation of the nasal septum, damage to the eyes, sensitization dermatitis, and skin ulcers, the label could say: "Causes cancer, liver and kidney damage, blood abnormalities, and irritation of the skin, eyes, and mucous membranes." The warning about it causing sensitization dermatitis, respiratory irritation, skin ulcers, perforation of the nasal septum, or conjunctivitis could be covered by the less specific phrase, "irritation of the skin, eyes, and mucous membranes."

You may have to reconcile inconsistent information in different sources by evaluating the evidence used in making the hazard classification. For example, if the chemical causes severe burns upon contact with skin, eyes, or mucous membranes, you would not also have to say that some evidence reported it to be a skin irritant. You also may need to distinguish between acute and chronic hazards. For example, some chemicals present a hazard only from prolonged exposure to high concentrations. When you determine what hazard information to include on a label, you should make an assessment of the information you report on the MSDS and coordinate the two documents.

Hazard warning. The definition of "hazard warning" states that the warning must convey the specific hazard of the chemical. Consistent with the proposal, the hazard warning can be any type of message, words, picture, or symbol that provides at least general information regarding the hazards of the chemical in the container such as "flammable" or "suspected human carcinogen". If applicable, the warning must include the organs affected. For example, if the chemical causes lung damage when inhaled, then "causes lung damage" is the appropriate warning. "Lung damage" would be the hazard and "do not inhale" would be

the protective measure. Phrases such as "caution," "danger," or "harmful if inhaled" are precautionary statements.

Some commenters suggested that the labels would need to state the container's contents and provide a general hazard warning, using words like "combustible," "flammable," or "poison." A general statement, however, would not convey enough information to enable miners to adequately protect themselves. Other commenters believed that only a precautionary statement, such as "Danger!" would be needed. Some suggested that we require operators to include precautionary statements on the label, in addition to the other information. A few commenters stated that warning labels should summarize acute and chronic health effects and safety hazards and should provide advice and a phone number in case of emergency. Others recommended that labels include the target organ(s) affected by the chemical.

We intend that the label include the target organ effects, if such information is available. There are some situations where the specific target organ effect is not known. When this is the case, you can use a more general warning statement. For example, if the only information available is an LC₅₀ test result, "harmful if inhaled" is appropriate. (An LC₅₀, or the lethal concentration by inhalation for 50% of the animals tested, is the exposure concentration at which half of the animal test subjects died.)

Our existing standards (§§ 56/57.16004; §§ 56/57.20012; § 77.208) require you to label hazardous materials appropriately. In addition to the required information, we encourage you to include other helpful information on the label. For example, the symbols on the label representing precautionary measures or safe work practices, such as "chemical goggles," "respiratory protection," or "use only in a well-ventilated area," serve as reminders about the hazard and increase the likelihood that miners will use these measures.

Label format. Many commenters suggested various format criteria and coding schemes for labels, affirming the benefits of uniformity. Consistent with the proposal, we recognize that there are a variety of different labeling systems to warn persons of chemicals and their hazards. Some systems rely on numeric codes and specific colors to convey the hazards of chemicals. These systems, however, usually convey the degree of risk that a chemical poses and not specific hazard information. You can use these types of systems for labels used at the mine if you communicate

the specific physical and health hazards of the chemicals through other parts of the HazCom program, such as MSDSs and training. These systems are appropriate for labels to downstream users if you also provide them the other labeling information and the way to understand your labeling system.

Recognizing that a specific system is not necessary to communicate the chemical's identity and its hazards, and that some mine operators already have a labeling system, HazCom's labeling requirements are performance oriented. The interim final rule is deliberately flexible to allow for the adoption of an international system for classifying and displaying hazard information, when it becomes available. Although the interim final rule does not require a specific labeling system, we encourage you to adopt a label format that is in accordance with an established standard. In its comments on the proposal, the Chemical Manufacturers Association (CMA) suggested that operators use the "American National Standard for Industrial Chemicals—Precautionary Labeling" (ANSI Z129.1–1988) for their labeling system. Uniformity in the format, content, and terminology of MSDSs and labels aids understanding and simplifies their development. It also allows miners and others to find critical information quickly. Consistent domestic labeling requirements between MSHA and OSHA will make communication among industries more effective and will make it easier for them to adopt global hazard communication standards.

Other languages. The interim final rule, consistent with OSHA's HCS and the proposal, requires that the label be in English. If a significant number of your miners do not read English, or if their English is poor, you should provide the labeling information in another language in addition to English or add symbols to communicate the chemical's hazards. For example, if your workforce speaks Spanish, you should add a label in Spanish that gives the chemical's identity and hazard information or provide a translation of the labeling information to the affected miners. If your workforce speaks several different languages, or there are other literacy issues, you should add symbols to the label to communicate the chemical's hazards. You must ensure that the workforce understands the meaning of the symbols.

Carcinogen labeling. As discussed under "Identifying Hazardous Chemicals," the HazCom proposal, interim final rule, and OSHA's HCS all require that the employer consider a chemical to be hazardous if it is listed

in the specified ACGIH, NTP, or IARC publications or regulated under agency standards. You must include a carcinogenic warning on the label if one of these sources classifies the hazardous chemical as a potential or confirmed carcinogen.

Many commenters suggested that we allow operators to determine what should be listed on the label based on an assessment of the weight of the evidence. Several pointed out that both IARC and NTP acknowledge that their classification evaluations are not complete hazard assessments. IARC and NTP use a strength-of-evidence approach that does not take into consideration negative studies for evaluating a chemical's carcinogenic hazard. In regard to the use of ACGIH, one commenter stated:

ACGIH lists chemicals identified as carcinogens from "other sources" without identifying these sources. The ACGIH documentation of TLV's and BEI's lists five sources of information on carcinogens (IARC, MAK, NTP, NIOSH, and TLV). Since these sources often use each other as their reference point rather than come to independent conclusions, we believe that the "carcinogen" tag can be inappropriate unless there is conclusive evidence of carcinogenicity. While fuller explanations may be given on an MSDS, we believe that automatic triggers should not be used to determine warnings on labels.

Although some commenters specifically objected to using IARC, NTP, or ACGIH as a trigger for cancer labeling, others supported carcinogen labeling based on the judgment of these organizations, but only for those chemicals identified as known human carcinogens. Another commenter objected to carcinogen labeling for those chemicals listed in IARC Group 2A. Group 2A carcinogens (probably carcinogenic) are known to induce cancer in animals, but the evidence of human carcinogenicity is limited. These commenters believed that requiring carcinogen labeling for potential or probable carcinogens would result in "over-labeling" and detract from the focus that should be given to more serious hazards. In addition, one pointed out that "over-labeling" could have the adverse marketplace consequence of encouraging shifts to unlabeled products, typically without an assessment of whether the unlabeled product is, or is not, safer than the labeled product. Several commenters supported including IARC, NTP, and ACGIH's carcinogenicity findings on the MSDS, but not on the label. A few commenters, however, recommended that we require labeling for all

carcinogens, including those listed as potential or probable.

In considering the comments, we find that IARC, NTP, and ACGIH base their cancer classifications on valid scientific evidence. This evidence warrants informing miners of the cancer hazard associated with any chemical on these lists. Miners have a right to know about this hazard information. If one or more of these organizations has associated a potential, probable, or confirmed carcinogenic hazard with a chemical at the mine, you must inform the miners who can be exposed. A fuller discussion about the use of these organizations as sources is in the Hazard Determination section of this preamble.

Silica labeling. IARC is one of the authoritative sources listed in HazCom for establishing whether a chemical is a carcinogen. In 1997, IARC classified inhaled (respirable) crystalline silica as Group 1, a confirmed human carcinogen.

A number of commenters expressed concern that the proposal would have required the labeling of silica as a carcinogen. Several argued that labeling silica as a carcinogen was both impractical and unnecessary. One of these commenters stated:

Silica is, as MSHA recognizes, a natural substance occurring in the great majority of the earth's crust and labeling over one billion tons annually of naturally occurring stone produced by American quarries would clearly be impractical and unnecessary by the standards of good science.

Some commenters stressed that the labeling requirement should apply to respirable silica because the size of the silica particle determines whether or not it is a health hazard. One commenter stated:

OSHA has taken the position in interpreting its HCS that it applies only to crystalline silica available for respiration. * * * Mr. Gerald F. Scannel, Assistant Secretary of Labor for OSHA, stated that kaolin dust products containing less than 0.1% respirable crystalline silica would be exempt from coverage under the provision of paragraph (d) of the [OSHA's] HCS, "Hazard Determination."

In addition, this commenter cited a statement by Dr. David Rall of the NTP that, "Only crystalline silica in respirable form will be added to the list of substances in the [NTP] 6th annual report."

The interim final rule does not address the labeling of containers of hazardous chemicals off mine property. You will have to label containers of any product containing 0.1% or more of respirable crystalline silica as a carcinogen to meet OSHA's HCS labeling requirements for your

customers. The HazCom interim final rule exempts the raw material being mined or processed from labeling while on mine property. For example, if you operate a silica flour mill, you do not have to label containers of the raw material, such as crushers, bins, or hoppers.

Under HazCom's hazard determination criteria, you must consider crystalline silica to be a human carcinogen when it is in respirable form and capable of being released in the work area or when an activity, such as crushing, would create respirable dust. Although you do not have to label it for purposes of HazCom, you must train miners about silica's carcinogenicity.

Providing copies. The proposal would have required you to provide a copy of the labeling information with the initial shipment of a hazardous chemical to an employer. You could include this labeling information with the chemical's shipping papers rather than attach it to each container. If you became aware of any significant new information concerning the hazards of the chemical, you had to incorporate this new information, as appropriate, into a new label within 3 months and provide it with the next shipment of the chemical to the employer. In addition to the identity of the hazardous chemical and appropriate hazard warnings, the proposal also would have required you to provide the employer with your name and address or the name and address of a responsible party who could provide additional information about the hazardous chemical. The proposal did not specifically address customers who were not employers.

Some commenters said that HazCom should require this labeling information on all containers shipped from the mine. They stated that it would be easier to label each shipment to avoid the extra recordkeeping associated with tracking which shipments to employers must contain labeling information. Several commenters stated that 3 months is too long and that you should inform miners immediately of significant new hazard information. These commenters suggested 5 days, 30 days, and 45 days as adequate time for you to incorporate the new information into a new label.

Several commenters wanted us to cover hazardous chemicals shipped from a mine in a way that was consistent with the OSHA HCS. Some questioned our authority to require you to provide labels on products leaving mine property.

The interim final rule requires you to make label information available upon request. Our experience indicates that

mine products are already labeled and MSDSs are sent in a manner consistent with OSHA's HCS. We believe that market forces and the requirements of other agencies will serve to ensure that you label your product appropriately for downstream users. Although you are responsible for the accuracy of the information on any label you prepare, you are not responsible for the accuracy of labels a manufacturer prepared for a hazardous chemical brought to your mine. We agree with those commenters who felt that you should inform miners immediately of any significant new information about the hazards of the chemicals in their work area, whether or not you have to update the label.

4. § 47.33 Label Alternatives

HazCom requires that the hazardous chemical's label warn miners about the presence, chemical identity, and specific health and physical hazards of the chemical. Neither the proposal nor the interim final rule includes specific criteria for the format of the label. The interim final rule requires that the label be prominently displayed, legible, accurate, and in English; display appropriate hazard warnings; and use a chemical identity that permits cross-referencing between the list of hazardous chemicals, a chemical's label, and its MSDS. In the case of a trade secret, you must comply with the requirements of §§ 47.71 through 47.77 (trade secrets).

Commenters supplied a wide variety of suggestions for a label format. Several recommended that we require a standardized label format. Some commenters suggested that a coding or rating system might be helpful. Some requested that we permit flexibility in our labeling requirements and allow batch labeling, color coding, standardized containers, or stenciling a generic name on the container. Others did not support the use of a coding or rating system on labels because they thought that miners would find such a system confusing. Some commenters suggested that we require labels to have large bold print with pictorial or color warnings. Another suggested that operators could label containers using markers or paint.

The label requirements in the interim final rule are performance-oriented, flexible, and consistent with the proposal and OSHA's HCS. Labels made with markers or paint are acceptable as long as they identify the hazardous chemical and its hazards and are maintained in legible condition. Any name may be used to identify the chemical contents of a container as long as it can be cross-referenced with the

MSDS and the hazardous chemical list. You may substitute various types of standard operating procedures, process sheets, batch tickets, blend tickets, and similar written materials for container labels on stationary process equipment. The alternative, however, must identify the container to which it applies, communicate the same information as required on the label, and be readily accessible throughout each work shift to miners in the work area. You can post signs or placards that convey the hazard information if there are a number of stationary containers within a work area that have similar contents and hazards.

5. § 47.34 Temporary, Portable Containers

The interim final rule, consistent with the proposal and OSHA's HCS, does not require you to label a portable container into which a hazardous chemical is transferred from a labeled container, if the portable container is for the immediate use of the miner who performs the transfer. To clarify compliance responsibilities, we replaced the word "immediately" with the phrase "during the same work shift" in the interim final rule.

Most commenters supported the proposed portable container exemption, but some claimed that it was too restrictive. These commenters recommended that we not require labeling of portable containers if they are subject to operating procedures that provide a means of alerting miners to their contents. Other commenters recommended that we expand this exemption to include any designee of the miner who performs the transfer. One of these commenters stated that adding the word designee would allow those individuals working with the miner who transferred the hazardous chemical, also to use that chemical. Otherwise, each miner working on the job would need his or her own portable container, perhaps creating a bigger hazard. Another commenter opposed expanding the portable container exemption to include the miner's designee because of concern that the miners would not communicate the hazard information to each other.

Other commenters opposed our proposal to exempt portable containers, believing that it was too lenient and could create a serious hazard. Commenters expressed concern—

- That unattended, misplaced, or forgotten unlabeled portable containers could present a high risk of exposure to hazardous materials due to inappropriate handling or disposal by other workers;

- That unlabeled portable containers could be potentially dangerous because of the residues left in them;

- That if the chemical in the portable container was not completely used by the end of the shift, we should require that the unused portion be returned to a labeled container;

- That all containers of hazardous chemicals be labeled under this law or other applicable laws; and

- That this section should be clarified because it seems to imply that you have no responsibility to maintain labeling information if a product is repackaged or transferred to another container at the mine site.

After considering the comments and observing the use of portable containers in mining, we determined that allowing the miner who performs the transfer to use a hazardous chemical from an unlabeled container will not reduce that miner's protection. One common use of temporary, portable containers is when a miner transfers a lubricant from a 55-gallon drum into a small plastic or galvanized container in order to safely access and properly service machinery. We recognize that it would be impractical, or at least inconvenient in some instances, to access many pieces of equipment without the use of these containers.

In response to commenters' concerns and contrary to the proposal and OSHA's HCS, we expanded this exemption in the interim final rule. Under HazCom, you can allow other miners to use a hazardous chemical from an unlabeled, temporary, portable container provided you ensure that they know the chemical's identity, its hazards, and the protective measures needed; and that the container is left empty at the end of the shift. You can leave the chemical in the portable container for the next shift if you label the container. For example, if a container is emptied by one miner and refilled by another miner, you do not have to label the container before the second miner uses it. On the other hand, if you leave the hazardous chemical in the temporary, portable container, expecting to use it the next day, the container would have to be labeled.

We expect that you already have labeled many of your portable containers because our existing standards require you to label containers of hazardous materials. Such labeling also is a safe work procedure to keep miners from placing a chemical in a container you had previously used for an incompatible chemical.

E. Subpart E—Material Safety Data Sheet (MSDS)

The MSDS is a detailed information bulletin that serves as the principal source of important information about hazardous chemicals used or produced at the mine. This interim final rule requires you to have an MSDS for each hazardous chemical to which a miner can be exposed under normal conditions of use or in a foreseeable emergency. Although we revised the format and language of HazCom's MSDS requirements to reduce redundancy and use plain language, the interim final rule is substantively the same as the proposal and OSHA's HCS. An MSDS that complies with OSHA's HCS will meet our MSDS requirements because HazCom requires the same information on the MSDS as OSHA's HCS. Likewise, we expect that MSDSs meeting MSHA's criteria will meet OSHA's criteria for MSDSs under its HCS.

In the proposed rule, provisions for determining hazards of single substances and mixtures were repeated under both "hazard determination" and "MSDS." To eliminate this duplication, the interim final rule includes these provisions in the hazard determination section only. Also, in response to comments, we consolidated HazCom's provisions on access and cost for copies of MSDSs in a new, separate section on "Making HazCom Information Available" (§§ 47.61 through 47.63).

1. § 47.41 Requirement for an MSDS

The interim final rule requires you to have an MSDS for each hazardous chemical at the mine. If you do not have an MSDS for a chemical brought to the mine and its label indicates that it is hazardous, the interim final rule requires that you obtain one from the manufacturer or supplier before using the chemical. You must prepare an MSDS for any hazardous chemical produced at the mine.

Chemicals brought to the mine. The proposed rule would have allowed you to request, but not require you to obtain, an MSDS prior to using a hazardous chemical. Several commenters stated that requesting an MSDS was not sufficient and that you should have to obtain the MSDS before using the chemical on mine property. As indicated in the proposal, commenters on the ANPRM urged us to adopt MSDS requirements identical to OSHA's. Consequently, MSHA's provisions [in the proposal] on MSDS's are substantially similar to those in OSHA's standard. In response to comments and to make HazCom consistent with OSHA's HCS, we changed the word

"request" to "obtain" in the interim final rule. You must have an MSDS available to miners in their work area for each hazardous chemical to which they may be exposed.

Another commenter suggested that we allow you the flexibility to have either an MSDS or appropriate information about the chemical's hazards, safe work procedures, means of control, and first aid and emergency procedures immediately available. Substituting the information suggested by the commenter for the MSDS would not be sufficient because the MSDS contains much more information. OSHA requires MSDSs for hazardous chemicals produced at non-mining operations. For this reason, we expect that most, if not all, MSDSs prepared by chemical manufacturers or suppliers are readily available by fax or from the internet. If you have a document available to miners that contains all the information required in § 47.42 (MSDS contents), we would consider that to be an MSDS. HazCom does not require a specific MSDS format, but the MSDS must contain all the information required to the extent that it is available.

Several commenters stated that we should require MSDSs to be accurate. You are responsible for the accuracy of MSDSs that you prepare for a hazardous chemical produced at your mine. HazCom does not require you to be responsible for the accuracy of an MSDS that you receive with a shipment of a hazardous chemical and accept in good faith. Because OSHA requires that information contained in MSDSs accurately reflect the scientific evidence that formed the basis for determining that the chemical is hazardous, we believe that chemical manufacturers and suppliers develop MSDSs correctly. On the other hand, considering that you are responsible for communicating accurate health and safety information about the mine and the job to the miner, the MSDS that you maintain must include any new information the manufacturer sends you.

Commenters stated that manufacturers do not indicate what information is new on the MSDS and it is impractical and overly burdensome to require operators to update MSDSs they do not prepare. We do not see this as a problem. The MSDS will show the date it was prepared or last changed. If you receive an MSDS that has a later date than the one you have on file, you should keep the one with the most recent date and discard the older. If you receive an MSDS that is obviously inaccurate or which you suspect is inaccurate, or if a category of information is missing, you should

bring this to the attention of the party responsible for preparing the MSDS. There should be an address and telephone number on the MSDS.

Some commenters stated that requiring MSDSs as part of HazCom would be burdensome to operators and of no real value to miners because of the complexity of information required to be provided on the MSDS. Another commenter stated that to keep track of which materials may or may not require MSDSs places an overwhelming burden on operators.

MSDSs are essential in supplying information to the miner, as well as to the mine operator and independent contractor. Information, such as the chemical's properties, for example, may not be found on labels. The MSDS contains the information that we require you to communicate to miners about the hazardous chemicals to which they may be exposed. Although it may be an administrative burden to keep track of MSDSs, obtaining the MSDS from the manufacturer or supplier of the hazardous chemical relieves you of conducting independent searches for the required information. We expect that MSDSs will be an important resource for you in writing the HazCom program and modifying or developing training courses.

As a result of the OSHA HCS, MSDSs have become widespread in general industry and many operators voluntarily obtain and use them. We suggest that you check the list of all the hazardous chemicals at your mine against the MSDSs that you have collected to discover if there are any MSDSs missing. If the list indicates that you use a hazardous chemical at the mine, but do not have an MSDS for it, you must contact the manufacturer or supplier to obtain the missing MSDS.

Chemicals produced at the mine. The interim final rule requires you to prepare an MSDS for each hazardous chemical produced at the mine and update this MSDS with significant new information within 3 months of becoming aware of it. This provision is the same as the proposal and OSHA's HCS. A few commenters requested that the final rule remove the reference to "significant" and "new" information and add the phrase "scientifically valid" to prevent the incorporation of questionable information into the MSDS. We intend that the MSDSs you prepare accurately reflect the available scientific evidence that formed the basis for your determination that the chemical is hazardous (§ 47.11 contains criteria for determining a chemical's hazards). If the chemical presents more than one

hazard, you have to address each of them on the MSDS.

One commenter indicated that his operation updates the MSDS every 3 months. This time period is consistent with provisions in the interim final rule, the proposal, and OSHA's HCS for including significant new information on the MSDS and label and in the miner's training. In addition, some States have HazCom programs that are identical to OSHA's and require the use and distribution of MSDSs. Many mine operators are supplying MSDSs with their product as a good business practice, in response to requests from their customers, or to comply with State or local laws. We encourage you to check regularly for new information on the hazardous chemicals you produce.

MSDSs for common minerals. In the proposal, we requested comments on the usefulness of requiring operators to develop or provide MSDSs for common minerals such as sand and gravel, crushed stone, or coal. These minerals are the hazardous chemicals produced by over 90% of the mines. We also requested comments on whether we should develop MSDSs for common minerals and provide them upon request to all interested parties. A few commenters agreed that we should develop MSDSs for common minerals. Two commenters said that we should not develop them. One of these stated that generic MSDSs would not be useful and that we should not require MSDSs for these common minerals.

If you determine that a common mineral is hazardous using the criteria in § 47.11, hazard determination, you must comply with the provisions of HazCom to the extent applicable.

2. § 47.42 MSDS Contents

In the interim final rule, as in the proposal, we require that MSDSs be in English, but do not otherwise include a requirement for the format. Although the proposal did not specifically require that the MSDS be legible and accurate, we added these terms in the interim final rule to clarify your compliance responsibilities.

Some commenters suggested that we require MSDSs to be made available in alternative languages. Although the MSDS must be in English, you also may provide it in other languages. Just as you have to communicate job duties and work procedures to those miners who may not read or understand English, you must communicate the required information about a hazardous chemical to them. MSDSs for hazardous chemicals brought to the mine are probably available in Spanish or other languages from the manufacturer or

supplier or other sources, such as trade associations and websites. If available, you must provide the MSDS in a language the miner can understand. If you employ miners who do not read English but read another language, having an MSDS in the language the miner can read makes it easier for you to communicate the chemical's hazards. At those mines where multiple languages are spoken, we suggest you use symbols to help communicate the nature of the hazard and protective measures, and reinforce the miner's understanding of this information.

Similarly, some commenters claimed that miners would be unable to understand the MSDS because the language is too technical. As stated earlier, you must balance technical accuracy against miner understanding. For example, you can use simple, clear language when preparing the MSDS: you could use "lungs" as a route of entry rather than "inhalation" or "causes nerve damage" rather than "neurotoxin."

Information required in MSDS. HazCom requires that each MSDS include the following information about the chemical:

1. *Identity.* The chemical and common names of the hazardous chemical if it is a single substance and of the hazardous ingredients if it is a mixture. The identity used must permit cross-referencing between the list of hazardous chemicals at the mine (§ 47.22), a chemical's label (§ 47.32), and its MSDS.

2. *Properties.* The chemical's physical and chemical properties as appropriate, such as boiling point, melting point, vapor pressure, evaporation rate, solubility in water, appearance and odor, flash point, and flammability limits.

3. *Physical hazards.* The hazardous chemical's potential for fire, explosion, and reactivity.

4. *Health hazards.* The hazardous chemical's potential to cause an illness or injury, such as its acute and chronic health effects, signs and symptoms of exposure, any medical conditions that are generally recognized as being aggravated by exposure to the chemical, the primary routes of entry (for example, the lungs, the stomach, the skin or eyes).

5. *Carcinogenicity.* The hazardous chemical's carcinogenic classification, if any, such as whether the chemical is listed as a potential, probable, or human carcinogen in the sources specified in § 47.11 (identifying hazardous chemicals).

6. *Exposure limits.* The MSHA limit and any other exposure limit used or recommended by the preparer of the

MSDS, where available, such as its ACGIH TLV, OSHA PEL, or NIOSH recommended exposure limit.

7. *Safe use.* Any generally applicable precautions for safe handling and use that are known to you or the responsible party preparing the MSDS, such as appropriate hygienic practices, protective measures during repair and maintenance of contaminated equipment, procedures for clean-up of spills and leaks, and special disposal requirements.

8. *Control measures.* Generally applicable control measures, such as ventilation, process controls, restricted access, protective clothing, respirators, and goggles.

9. *Emergency information.* Emergency procedures, such as special instructions for firefighters; first-aid procedures; and your name, address, and telephone number, or that of a responsible party who can provide additional information about the hazardous chemical and appropriate emergency procedures.

10. *Date prepared.* The date of preparation of the MSDS or the last change to it.

This information is substantively the same as the proposal and OSHA's HCS. One difference is that HazCom requires you to list the MSHA exposure limit for the chemical, if there is one.

Numerous commenters asked that additional information be required on the MSDS, such as Department of Transportation (DOT) requirements, IARC and NTP conclusions, CAS numbers, NIOSH Recommended Exposure Limits, Hazardous Material Information System (HMIS) hazard code information, upper and lower explosive levels, and how products are covered by other agencies' programs, such as EPA requirements under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), Resource Conservation and Recovery Act of 1976 (RCRA), and Superfund Amendments and Reauthorization Act of 1986 (SARA).

We did not include additional requirements for the content of the MSDS in the interim final rule. The interim final rule requires MSDS contents that are consistent with the proposal and OSHA's HCS. The requirements are well-known, and adding to the contents could obscure crucial information needed for miner protection. To aid understanding, we included additional important examples (solubility in water, appearance and odor, flammability limits, and explosive limits). We encourage you to include additional helpful information, such as the DOT labeling requirements, the HMIS hazard codes, special instructions

for firefighters, or special disposal requirements.

Standardized format. Neither the interim final rule nor the proposal prescribe a specific format for the MSDS. Both HazCom and OSHA's HCS allow the preparer to determine the format, provided that it addresses all the required categories.

Numerous commenters requested that we require a standardized format for MSDSs. Several of these commenters stated that they wanted us to adopt OSHA's MSDS form (OSHA-174), and others recommended ANSI Z400-1 "Guide for Preparing Material Safety Data Sheets." Another commenter recommended that we require operators who prepare MSDSs to present the same information in the same manner for the same hazardous chemical. One commenter was concerned that you would have to prepare duplicate MSDSs: one for OSHA and one for us.

There are numerous sources for MSDSs in addition to the manufacturer or supplier: university databases, chemical information services, trade association or union collections. We established minimum requirements for information that must be on the MSDS. Each MSDS must contain the same minimum categories of information.

If you cannot find the appropriate information to complete a specified category or if the category is not applicable to the chemical involved, you must indicate on the MSDS that no applicable information was found. For example, if the chemical does not have an exposure limit or is not classified as a carcinogen, mark these spaces "not applicable." The MSDS must not contain blanks, even if you choose to use a form with categories beyond those required, because blanks may be interpreted. This requirement is the same as in the proposal and OSHA's HCS. HazCom allows you the flexibility to develop an MSDS in any format you wish, as long as it contains all required information. We encourage you to use a standardized format and suggest OSHA's non-mandatory MSDS form (OSHA-174) as a guide.

Alternatives. In HazCom, as in the proposal, we allow you to use a single MSDS for a class or family of mixtures with similar hazards and contents, such as one in which the ingredients are the same, but their percentages vary from mixture to mixture, for example, organic solvents or lubricants. The few commenters on this provision agreed with the proposal.

Also, as in the proposal, HazCom allows you to use a single MSDS to address the hazards of a process rather than individual hazardous chemicals

when it is more appropriate. For example, the chemical composition of a flotation reagent changes as it evolves through the processing of a mineral. A few commenters objected to this option, but we decided to allow it for several reasons:

- We saw this option as relating to format, not scope.
- It is an option, not a requirement, intended to maximize flexibility and to acknowledge the practical limitations of dealing with chemicals.
- For the purposes of HazCom, "hazards of a process" refer to the physical and health hazards of chemicals in the process. If you choose to prepare an MSDS for a process, you have to include all the chemical hazards created during the process and any likely to be created if there is a malfunction or accident, even if the hazardous chemical is a short-lived intermediate.

3. § 47.43 MSDS for Hazardous Waste

A number of mine operators have EPA permits to burn hazardous waste in their kilns or to dispose of hazardous waste in tailings. If you have hazardous waste at your mine, the interim final rule requires you to provide exposed miners and designated representatives with ready access to any materials you have that can help them know about the hazardous waste. Suppliers typically send a manifest and MSDS with hazardous waste. If no MSDS is available, however, you must give the miner access to any information about hazardous waste which—

- Indicates its identity or that of its components;
- Describes its physical and health hazards; or
- Specifies the appropriate protective measures.

Our proposal would have exempted EPA-regulated hazardous waste from HazCom's labeling and MSDS requirements. It still would have required you to determine the nature of the waste's hazards and instruct miners about them. Proposed § 46.3 (hazard determination) stated:

(b) Operators who receive chemicals shall determine their hazards based on the chemicals' material safety data sheets and container labels, except that the procedures in paragraph (a) of this section shall be followed for hazardous waste received by operators when a material safety data sheet cannot be obtained.

Paragraph (a) contained the criteria for determining the hazards of chemicals produced at the mine.

OSHA's HCS includes an exemption for hazardous waste regulated by EPA under the Solid Waste Disposal Act, as

amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended (42 U.S.C. 6901 *et seq.*). Although OSHA's HCS excludes coverage of hazardous waste regulated by EPA, OSHA has other specific standards directed to hazardous waste operations (29 CFR 1910.120). OSHA was required to issue these standards by § 162, Title 1 of the Superfund Amendments and Reauthorization Act of 1986 (SARA), as amended (29 U.S.C. 655 note). We do not have similar statutory requirements or standards regarding hazardous waste operations.

EPA standards require training of personnel at a hazardous waste facility, but this training appears to be directed primarily at limiting environmental impact. EPA standards also require an analysis of the hazardous waste as part of the process for obtaining a permit to burn or dispose of it. EPA does not require that this analysis specify the chemicals' hazards to workers or that the employer make this analysis available to employees.

Some commenters expressed concern that exempting EPA-regulated hazardous waste from HazCom would omit a segment of the mining population that is exposed to hazardous waste on a routine basis. These commenters believed that MSDSs should be available to miners exposed to hazardous waste, including miners working at facilities where hazardous waste is processed or used as a fuel.

As with other hazards exempt from HazCom, such as radiation, you have the responsibility to provide adequate hazard information and training to miners potentially exposed to EPA regulated hazardous waste in their work area. Our existing training standards require health and safety training and hazard training. To clarify that you must inform miners about the hazards associated with hazardous waste, even when the waste is exempt from labeling and MSDSs, we included a requirement to that effect in the interim final rule.

Operations disposing of hazardous wastes receive a manifest with each shipment. This manifest contains much of the information found on an MSDS, often in greater detail. Similarly, if you collect waste chemicals from your mining operation, you should know what these wastes contain and the hazards of the ingredients. The interim final rule requires that, if you are unable to obtain or prepare an MSDS for hazardous waste, you must ensure that you provide each potentially exposed miner with any information you have that—

1. Indicates the identity of the waste or its components,

- 2. Describes its physical or health hazards, or
- 3. Specifies the appropriate protective measures.

4. § 47.44 Ready Access to an MSDS

The interim final rule requires that you provide miners with access to MSDSs while they are in their work area. You can keep MSDSs at a central location if you ensure that they are readily accessible to miners in an emergency. The proposal had allowed you to keep MSDSs at a central location when it was not practical to maintain the MSDSs in the work area, if the miners had access to them at some time during their work shift, and if you ensured that miners could obtain the required information in an emergency.

Numerous commenters requested that the MSDSs be kept in a central location when mining conditions were not favorable for keeping these documents in the work area. A few commenters said that we should not specify how MSDSs are to be made available to miners, only that they should be available. Several commenters asked that access to MSDSs be available through electronic means, such as computers.

The purpose of requiring MSDSs in the work area where the chemical is stored, handled, or used is so that miners have quick access to critical information in emergency situations. The interim final rule provides flexibility for you to determine the best way to meet this requirement. We recognize that independent contractors especially need this flexibility because they work at different types of mines, typically multiple employer sites. Independent contractors, therefore, must coordinate the accessibility of MSDSs to other operators and miners, as well as their own.

The interim final rule allows you to maintain paper copies of the MSDSs, keep copies on a computer or on microfiche, use fax or other data transmission means, or any other method for providing access. You may keep MSDSs wherever you think appropriate and accessible as long as any miners who can be exposed can readily obtain a copy in an emergency. If you keep MSDSs in the mine office, you must tell the miners where they are and how to access them. Access means that the office must remain open while miners are working or you must make provisions for them to immediately unlock the office if needed. If the MSDS information is kept on a computer, it may be necessary to train the miner to access the information from the computer or make provision for backup

electrical power in the event of an emergency.

5. § 47.45 Retaining an MSDS

The interim final rule requires that you keep the MSDS for as long as the chemical is at the mine. The proposal would have required that you notify miners at least 3 months prior to disposing of the MSDS. The proposal did not specify how you were to notify the miner about the intent to dispose of these MSDSs. You would have had the flexibility to use any method that notified each miner who may have been exposed.

Several commenters suggested that the proposed 3-month retention period was not sufficient because the chronic effect of a hazardous chemical may take years to manifest itself. Some commenters recommended that we be consistent with OSHA and require a 30-year retention period. One commenter suggested a retention period of 20 years. A few commenters agreed with the proposed 3-month retention period and others felt that there should be no retention requirement at all. One commenter suggested that these notices be posted.

The intent of the proposal's requirement to notify miners prior to disposing of an MSDS was to ensure a miner had the opportunity to request a copy. The miner could then retain this information for future reference and you would not have had to maintain the MSDS for an extended period of time.

We considered a 30-year retention period to be consistent with OSHA requirements. The OSHA retention period for MSDSs derives from that agency's generic rule on recordkeeping, (29 CFR 1904), which was not developed specifically for hazard communication purposes. As an alternative to retaining the MSDS for 30 years, OSHA's recordkeeping rule allowed employers to keep a record of the identity of the chemical, where it was used, and when it was used.

Because of the nature of the mining industry, mines open and close frequently and there is a large turnover in miners each year. The records from closed mines would be impractical, if not impossible, to retain if the mine operator does not continue in business and there is no succeeding operator. Also, it would be impractical, if not impossible, to find the miners who may have been exposed to the chemical if the miner were no longer employed at the mine.

A requirement to retain MSDSs for a lengthy period of time could result in the accumulation of a great number of MSDSs. Manufacturers may change the

formulation of some chemicals as processes or new technologies improve, requiring a revision to their MSDS. We expect operators to keep the current MSDS for the chemicals they use. Maintaining many MSDSs for a single brand name that has changed composition a number of times could lead to confusion and potentially cause greater harm than not having the old MSDSs available in case a miner develops a disease 10, 20, or 30 years after exposure. Some mines use a large number and variety of chemicals briefly, depending on which product is cheapest or which the distributor is carrying at a specific time.

For the above reasons, we believe the 30-year retention period would be excessively burdensome for the mining industry. We also believe, however, that it would not be a great burden for you to notify miners 3 months before disposing of an MSDS.

The interim final rule requires that you maintain the MSDS at the work area or a central location as long as the hazardous chemical is at the mine, and notify miners at least 3 months before you dispose of an MSDS. We require you to provide copies of MSDSs to miners because they have a right to specific information about their chemical exposures. We determined that this access provision is adequate to ensure that a miner could obtain a copy of the MSDS if the miner wanted one.

We believe miners request copies of MSDSs because they are concerned about a chemical's effect on their health. If a miner has a health concern, he or she usually requests a copy immediately rather than later. The effects of some chemicals, however, have a long latency period between the exposure and the onset of a disease. Miners can get a copy at any time the chemical is at the mine, but may not think to get a copy until you notify them that you intend to dispose of it. You may use any effective method to notify the miners, such as a verbal announcement in a safety meeting, a personal written notice, an all-employee newsletter, or a notice posted on the mine bulletin board.

F. Subpart F—HazCom Training

Training is the foundation of the HazCom standard, the principal means of conveying HazCom information to the miners. A premise of this interim final rule is that miners will make safer and more healthful decisions about their work when they know more about the chemicals in their work area. When you provide effective training, miners will know how to read and understand labels and MSDSs, how to get chemical information, and how to use it. They

will understand the risks of exposure to chemicals in their work areas, as well as the means of prevention and protection. You must develop and administer a training program that ensures that miners receive and understand this vital information about chemical hazards.

1. General Comments and Responses

The principal training standards that apply at your mine are found in parts 46 or 48, depending on the commodity you produce and the type of mine that you have. We proposed HazCom in 1990 as part 46. Subsequently, we promulgated training standards for some segments of surface mining as part 46. The fundamental goals and the statutory basis for our training standards in parts 46 and 48 are the same. Although commenters could not have anticipated this new part 46, we considered their comments on part 48 as applicable to part 46.

The burden of HazCom training.

Under parts 46 or 48, you must provide miners initial training, annual refresher training and, whenever a new task is assigned, task and hazard training. The existing training standards provide an outline of subjects to be addressed for a successful safety and health training program: occupational health, hazard recognition, the safety and health aspects of the task, and safety and health standards, among others.

Several commenters felt that the proposal would be a heavy burden given the existence of these other training requirements. Some anticipated difficult administrative problems both in conducting and documenting the training. Some suggested that we not promulgate training requirements under HazCom, asking us to amend part 48 (and 46) to specify HazCom contents instead. Some suggested that language be included that "operators are permitted to satisfy the training provisions of [HazCom] by incorporating those requirements into provisions of Part 48—Training and Retraining of Miners." One commenter explained that by permitting—

* * * operators to choose incorporation of the training aspects of [HazCom] into Part 48, each operator can retain the flexibility to evaluate the practicality and appropriateness of using the Part 48 training scheme as the training administrative vehicle. Some elements which may be important to this evaluation are: the volume and variety of hazardous chemicals requiring hazard communication; the extent to which training required by [HazCom] is currently accomplished through Part 48; and the need to establish a separate training scheme with accompanying recordkeeping systems.

We intend HazCom to emphasize chemical hazards and to dovetail with

parts 46 and 48. You are in the best position to know the training needs of your miners and we have tried to grant you as much discretion as possible under HazCom to tailor your training program to fit these requirements. We expect this flexibility to improve training and, as a result, the ability of your miners to protect themselves. Although we expect most operators to integrate HazCom training into parts 46 or 48, you have the flexibility to conduct HazCom training independent of those requirements. We urge you to combine HazCom training requirements with existing requirements to unify your program, equipping better focused and informed miners to work safely with chemical hazards.

We disagree with the recommendation that all HazCom training requirements should be incorporated under parts 46 and 48 and that the training should not be addressed independently. The number of chemically-related injuries and illnesses indicates to us that, industry-wide, training on chemical hazards may be inadequate. HazCom provides a new emphasis in miner training—hazardous chemicals—that can be incorporated into your existing program, but can stand alone as well. Training is one of several interdependent aspects of a HazCom program. If we were to promulgate HazCom without training provisions, it would lose an integral part of the program and reduce its overall effectiveness. In response to comments, however, we added language specifically to clarify that you could credit relevant training conducted to comply with parts 46 and 48 and OSHA's HCS to meet HazCom requirements.

Your training and your approved training plan may have to be modified to add this new focus. The new HazCom training requirements are not automatically interchangeable with parts 46 and 48. In most instances, however, you should not have to revise your training plan to conduct HazCom training. We developed the training aspects of HazCom to be fully compatible with existing standards. If you train miners to recognize a chemical hazard, this is Hazard Recognition training. If you train miners about the HazCom standard, this is Mandatory Health and Safety Standards training. You must consider the hazardous chemicals at your mine, the conditions under which they are used, and what your approved plan says. We expect, however, that this interim final rule will have minimal impact on the mining industry with regard to increased training and administrative burdens.

Instructor qualifications. Some commenters recommended that we require you to conduct HazCom training using only qualified or certified trainers. One of these commenters stated that we should require OSHA qualification for HazCom instructors in mining and that we should require you to have hazard coordinators who maintain their qualifications by attending formal education or training courses. A commenter expressed concern that unqualified mine supervisors may be conducting HazCom training. Another commenter objected to the burden created by having to hire trainers and personnel to perform chemical identifications.

Under existing standards, we require every mine to have an MSHA-approved instructor for part 48 and a competent person designated by the operator for part 46. These trainers teach diverse and complex mine-specific courses. Although HazCom does not specifically require you to use qualified instructors, we expect that you will use the trainers on your staff to train miners about chemical hazards. MSDSs and labels are supposed to come with every container of a hazardous chemical brought to your mine. They will provide information for hazard identification and you should not have to hire or train additional persons. If you produce chemicals at your mine, we expect you to know which are hazardous and to train your miners on them. We recognize that training in chemical hazards will present challenges and you may have to obtain special HazCom training for your trainer.

Simplified HazCom training. In the proposal, we specifically asked for comments on additional ways to simplify HazCom training, especially for small operators and independent contractors, while retaining or improving the effectiveness of it. Several commenters recommended that we develop training materials, including sample MSDSs, plans, videos, and modules on chemicals. Some of these commenters suggested that we produce generic written HazCom and training programs for you to adapt to your needs. Another commenter suggested that we expand and use the State Grants Program to assist you in developing HazCom programs.

In response to these comments, we intend to develop a number of aids for the mining industry to use in implementing a successful HazCom program. Many of these aids are available now and the remainder will be available soon. You can contact the National Mine Health and Safety Academy at 304-256-3257 or visit our

website at www.msha.gov to find out what is available. Also, OSHA has developed training materials for its industries. Some are available from OSHA's website at www.osha.gov and can be adapted for use at mining operations.

Hazardous waste. The interim final rule does not exempt hazardous waste from training. Miners handling this type of hazardous material need all the information available to protect themselves from chemical hazards and from inadvertent exposure.

There are a number of sites under MSHA jurisdiction, particularly cement operations, which EPA licenses to burn hazardous waste. These operations typically use the waste as a supplemental fuel for their kilns. We specifically requested comments on the appropriateness of requiring HazCom training for miners who are exposed to EPA-regulated hazardous wastes.

One commenter supported our proposed hazardous waste training requirements. Another stated that we should use RCRA information for training purposes and copy OSHA's HCS. One commenter recommended that we not require HazCom training unless a miner is exposed to the hazardous waste. Another commenter stated that HazCom training in addition to EPA training may be redundant.

Uniformity in training. Some commenters recommended that we administer training for you because it would result in a higher level of consistency and quality in the training. Other commenters recommended the adoption of uniform training to help you and to provide consistency.

Over the past 15 years, various organizations have developed informational materials, training aids, and model training programs to assist industry in complying with OSHA's HCS. Due to the similarity between the OSHA HCS and HazCom, you should be able to use much of this material to assist you in developing and conducting miner training. Also, our State Grants Program may be a source of miner training and informational materials. Although we do not intend to conduct this training for you, we will provide information and assistance to trainers through our Mine Health and Safety Academy, Educational Field Services, the MSHA district offices, and State grantees.

2. § 47.51 Requirement for HazCom Training

The interim final rule requires you to instruct each miner about the hazardous chemicals in his or her work area; we proposed that you provide exposed

employees with training on hazardous chemicals in their work area. As with numerous other parts of the interim final rule, we believe that the scope and purpose clarifies how and to whom the provisions of HazCom apply and that the resulting change in language is not a change in meaning. Except for clear expression, we intend no difference between a requirement to "instruct," for example, and a requirement to "provide training." You must train a miner about the hazards of those chemicals to which he or she can be exposed.

Before first assignment to an area. The interim final rule requires you to provide HazCom training to miners before you assign them to work in an area that has a hazardous chemical. A number of commenters interpreted the proposal to mean that a miner had to complete HazCom training before an initial assignment to an area. Commenters expressed the view that the best way to impart knowledge and understanding is on-site while the miner is learning and doing the work.

The compatibility of HazCom with our principal training requirements includes the three forms of instruction to address different training needs: initial, refresher, and task. You must conduct initial training before a person is assigned to work; you must conduct refresher training within a year after the initial training. You must conduct task training both on-site before work is started and continue after a miner begins the assignment. We agree with commenters that valuable training can occur at the site at the time of assignment or after assignment. The requirement that you train miners before their first assignment to an area refers to general training appropriate to HazCom and may in fact supplement fuller on-site training. What comprises on-site training and how you allocate the time for each subject depends on the chemical hazards, the workforce, the processes at your mine, and the problems you foresee. It will vary depending on the mine.

We want to stress again, however, that HazCom is meant to work through the anticipation of risk. To reduce chemically-related injuries and illnesses, a miner must know about the hazards of the job and how to safely perform it before being left to work alone. The safety and health purpose of HazCom cannot be met if you delay the proper training until after an exposure has occurred.

New chemical hazards. The interim final rule requires you to train miners whenever you introduce a new chemically-related hazard into their work area. Introducing a new hazard,

however, is not the same as introducing a new hazardous chemical. For example, you have trained your mechanics in the hazards of a solvent they use at the mine. If you replace the solvent with a new solvent that presents the same hazards as the old and is going to be used in the same way and at the same locations, you are not required to conduct new training. You must, however, put the new solvent on your list of hazardous chemicals and keep a copy of the MSDS available. HazCom specifically states that you do not have to repeat training previously provided. If the new solvent poses a new hazard, you must train your mechanics about the new hazard. If you use the new solvent in a different way from the way you used your old solvent, you must train miners about any hazards that different use implies. If you will use the new solvent in a different location or process within their work area, you must inform them about this change and any hazards this new use implies.

HazCom training and exposure. Some commenters suggested that miners should have the information and training only for exposures that are planned or that would result from a foreseeable emergency or a mine disaster. Others recommended that HazCom training focus on chemicals known to be hazardous when miners are handling them, and where exposures are likely. Some commenters suggested that we base training on hazard recognition and avoidance at the work site where there is a potential for injury. Another commenter recommended that we base training on a risk assessment method applied to the hazards at the mine.

The interim final rule requires training for miners who work where there is a potential for exposure to a hazardous chemical. We are promulgating HazCom to anticipate the possibility of harm or loss from chemical exposures, not to regulate the risk of chemical use. Like any training or information standard, it is through this anticipation of risk that we mean for HazCom to address hazardous chemical exposure and prevent injuries and illnesses. We discuss the issue of potential exposure more fully under "§ 47.2 operators and chemicals covered" in this preamble.

Significant new information. Some commenters stated that the proposal was not clear in requiring operators to train miners about significant new information. In response to comments, we added language to the interim final rule to clarify that you must train your miners about significant new information about a chemical's hazards whenever you become aware of the new

information. You can give examples of this information at formal classroom training, informal safety meetings, or by a supervisor on the job. It can be written or verbal. We had intended in the proposal that you would update this information. The interim final rule, however, gave us an opportunity to make our intention clearer to you.

Significant new information about a chemical is rare. The physical properties of chemicals have been known for a long time and they almost never change. Most acute health effects are also known. Latent effects are more difficult to attribute to a chemical because of the time, environment, and other factors that obscure the relationship between the exposure and the disease. When new effects are found, they are generally significant. A recent example is IARC's reclassification of respirable crystalline silica as a probable human carcinogen. When these latent or other effects become scientifically accepted, you have a duty to tell your miners about them.

Credit for other training. To allow for the effective use of resources, as discussed above, the interim final rule includes language to clarify that you can credit relevant training conducted for compliance with OSHA's HCS or other parts of this chapter to meet HazCom's training requirements.

3. § 47.52 HazCom Training Contents

The interim final rule's requirements for the contents of HazCom training is the same as the proposal, but was restated in clearer language. One commenter suggested that groupings of substances by types of health effects would aid you in developing a training program. Another commenter requested that you be allowed to train miners on chemical groups or on individual chemicals. This commenter stated that product substitution does not necessarily mean that a new hazard has been introduced.

We intend HazCom to allow you to determine the best way to instruct your miners on how to identify and protect themselves from hazards associated with chemicals in their work area. If miners are exposed to a small number of hazardous chemicals, you could conduct their training specifically on each chemical. If miners are exposed to a large number of hazardous chemicals, you could conduct the training by categories of hazards and by referring miners to the substance-specific information on the labels and MSDSs and the locations or operations within their work areas where such chemicals are used. HazCom does not restrict

training to the hazards of a specific chemical or the hazards of a group of chemicals.

Several commenters supported the requirement that you train miners on the location and availability of the written HazCom program, written labeling information, and MSDSs. A commenter recommended that you periodically review the written program with all miners. Another stated that you should conduct HazCom training annually. The interim final rule requires HazCom training to address the HazCom standard, how you apply it at the mine, and how you make HazCom materials available.

Several commenters supported the required use of MSDSs in miner training and several objected to requiring the use of MSDSs in connection with miner training. A commenter recommended that we require hands-on practice with MSDSs. The interim final rule does not require you to include the actual MSDS when conducting the training. MSDSs are designed to be an excellent, concise source of information about a chemical and its hazards. We believe that MSDSs will often provide the most specific and reliable information about a hazardous chemical and you will find them a particular help when developing your training program. The interim final rule requires HazCom training to contain an explanation of the MSDS and its location and availability, but does not require hands-on practice. The interim final rule gives you the flexibility to provide additional training, including hands-on practice.

Some commenters suggested that miner training include the right to access MSDSs and that miners be advised of the retention time for MSDSs. As in the proposal, the final HazCom standard requires you to train miners about the requirements of HazCom, including the provisions addressing the miner's right to access the written HazCom program, written labeling information, and MSDSs.

Another commenter stated that you should keep MSDSs with training records to help prove that the chemical was present at the time of training. The interim final rule does not include this requirement because MSDSs may be kept in the work area where the hazardous chemical is present. Also, requiring you to maintain duplicate MSDSs with the training record could prove burdensome.

4. § 47.53 HazCom Training Records

MSHA and many commenters have a common concern about paperwork requirements and the recordkeeping burden this places on them. Congress

requires us to reduce the amount of paperwork you must keep or submit to us. That requirement is balanced against our need to function effectively in meeting the goals of the Agency. Aside from that, however, we wanted all MSHA training requirements, including records, to be as consistent and interchangeable as possible to keep the rule simple, reduce the burden, and eliminate any potential confusion for you. In view of those factors, we made a substantive change to the requirements for making and retaining training records. The proposal would have required the person responsible for conducting the training to certify the date and type of training given to each miner. You then had to keep this record for as long as the miner was exposed to a hazardous chemical.

The interim final rule is more performance-based in its recordkeeping requirements than the proposal in that it does not specify any format or require specific data for these records. We also reduced the record retention time significantly. Under the interim final rule, you must keep a copy of the HazCom training record for 2 years which makes this requirement the same as those in 30 CFR parts 46 and 48. We believe this considerable relief from your paperwork burden is justified because we verify records during mine inspections, twice or four times per year. Besides fitting in with the retention period for parts 46 and 48, we determined that 2 years was a reasonable amount of time for miners to access their training records.

MSHA Form 5000-23. For part 48 training, you must use our training certificate, MSHA Form 5000-23, or an approved equivalent, as a record of your training. Part 46 also requires documentation of training, but does not prescribe a specific form. If you incorporate HazCom training into parts 46 or 48 training, you can use Form 5000-23 or an approved equivalent to document the training. For purposes of HazCom, however, you may use any documentation that will convey adequate information for an inspector, miner, or miner's representative about who was trained, when, and what was covered. A copy of Form 5000-23 is available from our website.

Availability of records. The proposal also would have required you to make the certified training record available to miners, designated representatives, and MSHA. A commenter stated that the maintenance of certified training records should conform to the OSHA rule. We recognize that training and certification of training may be of particular concern to independent

contractors working at locations regulated by MSHA, as well as other locations regulated by OSHA. To alleviate their concern, if a miner is exposed to the same chemical hazards at both an OSHA and MSHA site, we will credit relevant training given the employee at the OSHA site as meeting our requirements. The employee's training record, however, must be clear that the subject of the training was relevant to both HazCom's requirements and the circumstances on mine property. We modified the proposal's provision for maintaining the certified record to indicate that a record, not a certification, must be available, and we moved this provision to subpart G, Making HazCom Information Available.

We intend that HazCom training cast light on chemical hazards. You should anticipate, therefore, that this training focus may cause miners to voice new concerns. You should prepare to respond to these questions with the best information you can gather: MSDSs, health sampling results for your mine, and data from whatever reliable sources are available to you.

G. Subpart G—Making HazCom Information Available

The proposal defined "access" as the right to examine and copy records. The interim final rule uses this same language. In providing access, the proposal required you to make written HazCom information available, but the requirements were repeated under each major provision. In response to comments, we consolidated these requirements in a single place in the interim final rule. We included language in the labeling and MSDS sections to emphasize the need to have this critical information readily available.

Hazard determination and awareness, labels and MSDSs, and training provide miners with essential information about hazardous chemicals. Each of these components of the HazCom program complements the others. They, along with the requirements for a written program and access to the HazCom materials, are necessary for the effective communication of chemical hazard information to miners and operators.

Chemical information can be complex and lead to confusion. When you give miners access to your written HazCom materials, you will have taken an important step toward eliminating the mystery, clarifying any misinformation and erroneous concepts, and defusing worker concerns about these chemicals. If miners are not given access to the information, they can grow suspicious about what you tell them and may disregard the information entirely, thus

reducing the effectiveness of the HazCom program. If you give miners access—to examine the material, copy it, and review it when they have time—they are more likely to share in the goals of the program, follow safe and healthful work procedures, and seek early medical help in case of exposure.

1. § 47.61 Access to HazCom Materials

The proposal required you to give miners and their designated representatives access to written HazCom materials: the written HazCom program, the list of hazardous chemicals, labeling information, MSDSs, and training records. The proposal also explicitly required that you give representatives of the Secretaries of Labor and Health and Human Services access to HazCom materials.

Some commenters asked that we not require operators to copy records for miners, citing an administrative burden. Others suggested miners put their requests for access in writing to "verify and effectively communicate actual requests for copies." Commenters also pointed out that § 103(a) of the Mine Act already gives representatives of the Secretaries of Labor and Health and Human Services access to HazCom materials.

This provision in the interim final rule is the same as the comparable provisions in the proposal, and is consistent with OSHA's HCS. Providing access means that if the miner requests a copy of any of the material associated with the HazCom program, you must give the miner a copy, as well as a copy of all updates. If you prefer, you can give the miner the records and the use of a copy machine so that he or she can make a copy. If you have an internet website, you could put the MSDSs on the website for access by your miners and customers, thus reducing the number of requests for paper copies.

As in the proposed standard, the final access provisions require operators to provide a copy of the records, in a relatively short period of time, for the miner to examine or to retain a copy. In the interest of flexibility, the interim final rule does not specify the time period in which you have to provide copies. Because you are required to keep all these HazCom materials available at the mine, including those available by computer, you should be able to provide them to miners, designated representatives, and Federal officials on the same day or, at most, within 24 hours of receiving the request.

While we agree that a written request would "verify" and "effectively communicate * * * an actual request",

there are numerous ways to achieve this goal other than having the miner put the request in writing. Requiring a written request is unnecessary because better alternatives are available. For example, you can have miners sign a receipt for the copies or initial a log. Requiring written requests could delay miners' access to essential HazCom materials. Therefore, the interim final rule does not require requests for copies of HazCom materials to be in writing.

Although it is not stated, you must provide access to representatives of the Secretaries of Labor (e.g., MSHA inspectors) and Health and Human Services (e.g., NIOSH investigators). In response to comments, the interim final rule does not explicitly include this provision because it is mandated under the Mine Act.

2. § 47.62 Cost for Copies

The interim final rule, as in the proposal, requires you to provide one copy of any written HazCom material without cost to the miner. This includes a single copy of any revisions or updates. Some commenters were concerned that operators would have to provide copies at no cost to the miner. They stated that this was not reasonable and recommended that we require you to provide one copy, but not additional copies of the same document, at no cost. For this reason, if the miner or designated representative requests another copy of material you have already given them, the interim final rule allows you to charge for subsequent copies of the same material. These administrative fees must be reasonable and they must be the same for everyone. You may not refuse to provide these additional copies. These provisions will ensure that miners have access to information about hazardous chemicals without placing an undue burden on you.

3. § 47.63 Providing Labels and MSDSs to Customers

If you produce a hazardous chemical, HazCom requires you to provide the labeling information and the MSDS to customers when they request them. If you have an internet website, you could put the labeling information and MSDSs on the website for access by your miners and customers, thus reducing the number of requests for paper copies. You also have the option of sending copies by e-mail or facsimile (fax).

We had proposed that you send labeling information with the first shipment of the product to a downstream user and updated information with the next shipment.

The proposal would have required you to send an MSDS upon request.

After further consideration of the comments, we concluded that a requirement to automatically send labeling information to customers is unnecessary. Our experience indicates that many operators currently include hazard information on their product's label in response to market forces generated by the labeling requirements of other Federal agencies, primarily OSHA's HCS.

H. Subpart H—Trade Secrets

The Trade Secrets subpart balances two important interests: the miner's interest in obtaining information on hazardous chemicals to prevent or treat adverse effects, and your proprietary interest in protecting your business. In general, we believe miner safety and health is best served by full disclosure of a chemical's identity. We recognize, however, the need to protect trade secrets. Once a trade secret is disclosed, its value may be lost. Under the Trade Secrets subpart:

- You may always protect information about trade secret processes and percentages of mixture.
- You may protect trade secret chemical identities except in emergency and specified non-emergency situations.
- You must always disclose the properties, the safe use, and the safety and health effects of trade secret chemicals.

Our proposal was, in essence, a restatement of the existing OSHA trade secret provision. The OSHA rule has worked for other industries for years, has withstood the test of experience, and can ensure that legitimate trade secrets will not be disclosed beyond what is necessary to protect miners. The comments we received on this subpart were generally supportive. The interim final rule, while revised stylistically, retains the substance of the proposal and the OSHA rule.

We understand that most operators are probably not concerned with trade secrets. One commenter said that the Trade Secrets subpart had limited utility for the coal industry. Another commenter said the provision was unnecessary for crushed stone. Both of these commenters wanted us to delete the trade secret provisions.

We disagree with those commenters. To the operators who create unique processing compounds, trade secret protection may be vitally important. One commenter thought that we were downplaying that importance by anticipating limited interest in the provision. On the contrary, we recognize the value of trade secrets

where they exist. Although the subpart may appear elaborate, it provides a proven framework to accommodate both the interests of protecting trade secrets and miners' health and safety. We have considered all comments submitted and determined that the Trade Secrets subpart will effectively provide for the investigation and settlement of disputes.

1. § 47.71 Provisions for Withholding Trade Secrets

Once a particular chemical has been classified as a trade secret, HazCom allows you to withhold the chemical name and other specific identification of the hazardous chemical from the written HazCom program, label, and MSDS, provided that—

- You identify the trade secret chemical in a way that it can be referenced without disclosing the secret;
- You disclose the properties and effects of the chemical in the MSDS;
- You indicate in the MSDS that the chemical's identity is being withheld as a trade secret; and
- You make the chemical's identity available to MSHA, health professionals, miners, and designated representatives following other provisions in this subpart.

HazCom does not require you to disclose process or percentage of mixture information. The interim final rule incorporates the language of the proposal with a few editorial changes.

2. § 47.72 Disclosure of Trade Secret Information to MSHA

This section requires you to disclose to us any information required by this subpart. If you are going to make a trade secret claim, it must be made no later than when you provide the information to us so that we can determine the validity of the claim and provide the necessary protection. We moved this provision for disclosing information to MSHA in order to keep all the disclosure sections together in the interim final rule. There were no comments on giving trade secret information to MSHA.

3. § 47.73 Disclosure in a Medical Emergency

You must immediately disclose the identity of a trade secret chemical to a health professional in a medical emergency. You are required to make this disclosure when the professional is treating the miner and determines that—

- A medical emergency exists, and
- The specific chemical identity is necessary to provide adequate treatment.

The proposal required you to identify the trade secret chemical to a treating

“physician or nurse” in the event of an emergency. One commenter suggested that we revise the provision to read “physicians” assistants and other health-care professionals who provide treatment” instead of “physician or nurse” so that HazCom includes other health-care professionals involved in treatment and patient care. This subject is also addressed in the Definitions subpart of this preamble under *health professional*.

You must provide the chemical's identity to the treating health professional immediately in an emergency. After the emergency, however, HazCom allows you to require that the health professional provide you with a written statement of need, as well as enter into a confidentiality agreement to protect against the unauthorized disclosure of trade secret information. In general, the statement of need verifies that the health professional will be using the trade secret information only for the needs permitted by HazCom. The confidentiality agreement ensures that the health professional will not make any unauthorized disclosures of the trade secret.

Under § 47.74, non-emergency disclosure, we state that you may be subject to a citation. One commenter recommended that similar language be added for unwarrantable failures if disclosure is denied in an emergency. We did not adopt this recommendation in the interim final rule. The § 47.74 citation provision is part of a procedure for reviewing denials of disclosures and balancing interests, which applies only to non-emergency situations. In any event, a violation of the emergency disclosure standard would, like other violations of mandatory standards, be subject to Mine Act enforcement.

4. § 47.74 Non-emergency Disclosure

Commenters agreed with the proposed provisions for non-emergency disclosure of trade secret chemical identity and we included these provisions in the interim final rule. In a non-emergency situation, you must disclose the trade secret information to a health professional providing medical or other occupational health services to a miner if they give you a written statement of need requesting the information. Under this section, miners and designated representatives also have the same access. The statement of need must address the reasons specified in the rule, and explain why other available information will not suffice. In addition, the requester has to enter into a confidentiality agreement.

5. § 47.75 Confidentiality Agreement and Remedies

The confidentiality agreement may restrict the use of the trade secret chemical identity to the health purposes indicated in the statement of need, and may provide for legal remedies in the event of a breach of confidentiality. You may not require a penalty bond in the confidentiality agreement; however, you may pursue other non-contractual remedies to the extent permitted by law.

You must allow the health professional, miner, or designated representative to disclose the trade secret chemical identity to MSHA if they decide there is a need. You may also provide in the agreement, however, that they must let you know before or at the time they make the disclosure. We proposed this last item as a mandatory requirement. It is not mandatory in the interim final rule because we determined that we could not enforce it. Accordingly, we are leaving it to the parties entering the confidentiality agreement to determine if it is needed. This provision only applies to disclosure of the trade secret chemical identity. In any event, miners and miners' representatives have the right under the Mine Act to confidentially report an imminent danger or health and safety violation to MSHA and explain how a trade secret chemical may be involved.

6. § 47.76 Denial of a Written Request for Disclosure

You may deny a written request for disclosure of trade secret information in non-emergency situations. Your denial must—

- Be in writing, which includes e-mail and facsimile (fax) communication;
- Be given to the person requesting the information within 30 days of the request;
- Include evidence that the chemical's identity is a trade secret;
- State why the request is being denied; and
- Explain how alternative information will satisfy the medical or occupational health need identified in the request.

Commenters agreed with the proposed provisions for denying a request for non-emergency disclosure of trade secret information and we included these provisions in the interim final rule.

7. § 47.77 Review of Denial

If you deny a request for trade secret information, the person or organization making the request can refer the denial to us for review. In order for the request

to be reviewed, it must include a copy of the request for disclosure, the confidentiality agreement, and your written denial. We will consider the appropriateness of the denial based on the evidence you submit to support your claim that the chemical's identity is a trade secret, the medical or occupational health need for the information, and the proposed means to protect confidentiality.

If we determine that you wrongfully denied the request for disclosure, you will be subject to a citation. If you can demonstrate to us that the execution of a confidentiality agreement would not protect you against the potential harm of an unauthorized disclosure of the trade secret information, we may set conditions to ensure that medical services are provided without undue risk of harm to you.

Finally, if you contest a citation for failure to disclose trade secret information, the Mine Safety and Health Review Commission will review the citation.

Commenters agreed with the proposed provisions for reviewing a denial and we included these provisions in the interim final rule.

I. Subpart I—Exemptions

The proposal included both the exemptions from the rule and the exemptions from labeling in the section on "scope." It then repeated the labeling exemptions under "labeling." Commenters remarked that this repetition was unnecessary. In the interim final rule, we placed each set of exemptions in a table in a separate Exemptions subpart near the end of the rule. This change in format brings the compliance requirements closer together at the beginning of the rule while, at the same time, eliminating repetition and making the exemptions more noticeable.

1. § 47.81 Exemptions from the HazCom Standard

The interim final rule exempts the following materials from the full scope of the standard. These exemptions are substantively the same as proposed.

Articles. We proposed to exempt articles from the full scope of HazCom. This proposed exemption, however, merely listed "articles" and contained no description or criteria under the "scope and application" section of the rule. The definition for "article" contained both the description and criteria for exempting an article, the same as in OSHA's HCS. The proposed definition described "article" as a manufactured item, other than a fluid or particle, that is formed to a specific shape or design during manufacture and

has end-use functions dependent upon its shape or design. For example, even though polyaromatic hydrocarbons are hazardous chemicals, their presence in a plastic bucket or seat cushions or ventilation curtains is exempt from HazCom because the bucket, seat cushions, and ventilation curtains are articles. Polyaromatic hydrocarbons in diesel exhaust or adhesives, however, are covered by HazCom. Even though chromium is a hazardous chemical capable of causing poisoning, chromium in a steel bar or chisel would be exempt from HazCom, regardless of its percent composition, because the bar and the tool are articles.

The definition also included paragraph (c), which stated that an article is exempt if, under normal conditions of use, it releases no more than trace amounts of a hazardous chemical and presents no physical or health hazard. For example, chromium in a welding rod is not exempt. Even though the welding rod is formed to a specific shape or design during manufacture and has end-use functions dependent upon its shape or design, the rod releases more than trace amounts of the hazardous chemical under normal conditions of use.

Commenters generally agreed with the exemption of "articles" and with its definition in the HazCom proposal. Some commenters suggested that we eliminate the criteria in paragraph (c) of the definition because they are unnecessary and contrary to the thrust of the exemption for articles. Other commenters suggested, however, that the definition must address risk for this exemption to be effective. To determine when an article is a hazardous chemical, some commenters suggested that the definition include a *de minimis* provision establishing a low threshold concentration below which the rule would not apply. Other commenters wanted a significant risk provision. Several commenters recommended that we link this provision to the Mine Act by stating that an article is exempt if it "does not release a quantity of a hazardous chemical that poses a risk of material impairment of health or functional capacity to miners." Another commenter suggested that HazCom clearly state our intent to exempt trivial risks. This commenter cited a court decision on OSHA's HCS which interpreted this exemption to mean that "any amount of release that could conceivably cause damage eliminates exemption as an 'article'."

Commenters also questioned what we meant by the terms "minute" or "trace" as applied to releases of chemicals from

an article and by the phrase "normal conditions of use."

These commenters stated that we must clarify this provision for the HazCom interim final rule to be effective. One commenter stated that—

* * * If exposures are negligible, labeling products as hazardous causes needless concern to workers. If warnings are provided for all measurable releases of chemicals, regardless of risk, workers will be unable to distinguish between meaningful/significant and trivial risks and the standard will be severely diluted.

We agree with commenters' concerns that paragraph (c) of the proposed definition of article is unclear about how much of a hazardous chemical released from a manufactured item under normal conditions of use would constitute either very small, minute, trace, or *de minimis* quantities. In many cases, it may be both time consuming and difficult to accurately determine whether an item is an article or a hazardous chemical. For example, one commenter stated that "[u]sing present day analytical chemical technology, extremely low levels of chemicals can be detected everywhere."

To clarify our intent, we separated the criteria for exemption from the definition for article. We also used the term "insignificant amount" instead of "very small quantity" and "minute or trace amounts." By using these terms, we intend to shift the emphasis from the quantity of a hazardous chemical release to the significance of the release as it relates to risk. We believe that these language changes do not change the substantive intent of this exemption. Although we do not intend to regulate trivial risks, we recognize that the meaning of "trivial" is subjective.

Biological hazards. We proposed to exclude biological hazards from the HazCom standard, consistent with OSHA's HCS. We received a few comments supporting this exemption. Some commenters objected to our exemption of biological hazards because there are dangers at the mine associated with these substances, and information concerning their hazards should be communicated to miners.

Although fungus, molds, and poison ivy have caused problems, there is little evidence to indicate that biological substances on mine property present any significant physical or health hazards. These biological hazards are not occupationally-related so much as they are ubiquitous. If there is a hazardous chemical present in addition to the biological hazard, it would be subject to the requirements of HazCom. For example, a bottle containing a

biological sample in a hazardous solvent would have to be labeled for the hazardous solvent. This specific exemption is included in the final HazCom. This is consistent with our proposal and OSHA's HCS.

Consumer products. We proposed to exempt consumer products and hazardous substances from the full scope of HazCom when operators or miners use them at the mine in the same manner as an ordinary consumer (normal consumer use). The proposal would have exempted consumer products as defined in the Consumer Product Safety Act (15 U.S.C. 2051) and hazardous substances as defined in the Federal Hazardous Substance Act (15 U.S.C. 1261), when they are subject to consumer product safety standards or labeling requirements issued under these Acts. The Federal Hazardous Substances Act (FHSA), administered by the Consumer Products Safety Commission (CPSC), regulates hazardous substances in interstate commerce. The CPSC specifically exempts pesticides subject to the Federal Insecticide, Fungicide, and Rodenticide Act, and foods, drugs, and cosmetics subject to the Federal Food, Drug, and Cosmetic Act, from the term "hazardous substance" under FHSA. In the proposal, we also specifically requested comments on the need to exclude from coverage any consumer product excluded by Congress from the definition of hazardous chemical under § 311(e)(3) of the Superfund Amendments and Reauthorization Act (SARA) of 1986, Pub. L. 99-499.

Commenters suggested that we define the term "consumer product" using a working definition for exempt materials rather than referencing statutes that mean nothing to most operators. One commenter stated that the EPA's consumer product exemption under SARA represents a more reasonable approach than that in the proposal and urged us to incorporate SARA's definition of consumer products. SARA defines a consumer product as—

* * * any substance to the extent it is used for personal, family or household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the general public.

This commenter reasoned that keying the consumer product exemption to consumer packaging and concentration would achieve the same result as the proposed exemption, but without requiring you to demonstrate that your miners use the consumer product as an ordinary consumer.

Another commenter indicated that many mining uses of consumer products

may result in exposure that was not contemplated by the manufacturer packaging the product for consumer use. Some commenters questioned how individuals using consumer products in an unintended manner would affect our exemption of consumer products from HazCom. Another recommended that we delete the requirement that you must demonstrate that the consumer product is being used in the same manner as in normal consumer use. The commenter further stated that there is no evidence to demonstrate that significant risks are present where such materials are used in a manner or amount not consistent with normal consumer use.

Commenters objected to the term "normal consumer use" in the proposal and recommended that we delete it from the interim final rule. Another commenter stated that requiring an additional determination, as to whether the product is used at the mine in the same manner as in normal consumer use, places an exceptional burden on you and recommended that we exempt all consumer products from HazCom. One commenter stated that consumer products should be included in the final rule because workplaces use the materials more frequently and in larger quantities than do private homes. Another stated that comparing the use of a consumer product by a miner with its use by a normal consumer is neither practical nor possible, because the duration and frequency of use are highly variable.

There appears to be a misconception that by virtue of being marketable to consumers, consumer products are inherently safe and their use does not require you to provide additional information to miners using them at the mine. Consumer products, however, are not inherently safe. We recognize that there are situations where a miner's exposure is significantly greater than that of an ordinary consumer and that, under these circumstances, consumer products or hazardous substances which are safe for contemplated consumer use may pose unique hazards at the mine. For this reason, we limit the exemption in such cases to labeling. You must comply with the other requirements of HazCom, such as those concerning an MSDS and training, to inform miners about the hazardous chemical. This is consistent with OSHA's HCS.

The interim final rule exempts consumer products from HazCom when you use them as an ordinary consumer. If you use the consumer product longer or in greater quantities or concentrations than an ordinary consumer, it is still exempt from labeling when it is already labeled under CPSC. If you want to

apply this exemption to a consumer product used at your mine, you must be able to show that miners use it in their work areas in the same manner as in normal consumer use and that the use results in a duration and frequency of exposure which is not greater than exposures experienced by ordinary consumers.

Many mines buy consumer products to use in their daily operations. The consumer products exemption is not dependent on whether you purchase it wholesale or retail. For example, a 5-gallon container of paint from a retailer may not have an MSDS. If you purchased this paint from an industrial supplier, it would be labeled to comply with HazCom and the supplier would probably provide an MSDS.

If you use a consumer product the way the manufacturer intended and the miner is not exposed to the chemical more often or for longer than an ordinary consumer, it is exempt from HazCom. The hazardous nature of a chemical and the potential for exposure are the factors that determine whether a chemical is covered. If the chemical is not hazardous, or if there is no potential for exposure, HazCom does not include it. For example, if you assign a miner to paint a hazard warning on an explosives magazine using a can of spray paint, that use would be one time and of short duration, just as it would be if an ordinary consumer used the product. If the miner's job is painting, requiring the use of spray paint frequently throughout the work shift or daily, this use does not qualify as "normal consumer use" and the hazardous chemicals in the paint would be included in the rule.

We expect you to know whether the use of a consumer product on mine property is unusual, of longer duration, or more frequent than home use. Although a complete exemption may be easier to comply with and enforce than a partial one, the issue of concern to us is whether miners have sufficient information to use the hazardous chemical safely.

In response to comments that we define "consumer products," we decided to incorporate CPSC's definition, rather than SARA's, because both HazCom and OSHA's HCS reference CPSC's definition. The CPSC's definition clarifies the exemption, is compatible with HazCom and OSHA's use of the term, and provides the necessary protections for miners.

Items for personal consumption. We proposed to exempt foods, drinks, drugs, cosmetics, and tobacco or tobacco products from HazCom when they were intended for personal consumption or use by miners while on mine property.

Commenters generally supported these exemptions. One commenter recommended that HazCom exempt distilled spirits, consistent with OSHA's exemption. Other commenters recommended that this exemption also include the condition that the product be packaged for retail sale and for use by the general public. A few commenters recommended that we not exempt any hazardous chemical.

The proposal did not specifically exempt alcoholic beverages sold, used, or prepared in a retail establishment, because we thought these exemptions did not apply to mining. Our existing standards for metal and nonmetal mines (§§ 56.20001 and 57.20001) prohibit intoxicating beverages in and around mines. Because we do not have standards for coal mines which specifically address intoxicating beverages, we have included an exemption for alcoholic beverages in the interim final rule to be consistent in both mining sectors and to avoid confusion.

The interim final rule exempts foods, drinks, including alcoholic beverages, drugs, cosmetics, tobacco, and tobacco products intended for personal consumption or use by miners while on mine property. For example, HazCom does not cover items such as aspirin in a first aid kit or food served at a mine cafeteria or vending machine.

Nuisance particulates. We proposed to exempt nuisance particulates that do not pose a covered health or physical hazard from the full scope of HazCom. Many commenters supported the exemption of nuisance particulates and nonspecific mine dust. Commenters stated that nuisance particulates do not present any known irreversible health effects and that there are no standards in existence to use as a baseline. Several commenters stated that inclusion of nuisance particulates in HazCom could reduce the effectiveness of a HazCom program by transmitting too much information to employees and diluting the focus on more serious or less recognized chemical hazards.

A number of commenters objected to the exclusion of nuisance particulates and nonspecific mine dust from HazCom. These commenters stated that many particles thought to be nuisances are found later to be important health problems and that if the hazard exists at the mine, regardless of the amount, it should be subject to the provisions of HazCom. One commenter stated that nuisance particulates are not excluded by OSHA and we should not exclude them. This commenter stated further that it would be useful to have MSDSs for nuisance particulates to provide

miners with reliable information. Another commenter recommended that we omit the nuisance particulate exemption from the standard because there is no proper classification of these substances.

We did not include an exemption for nuisance particulates from the provisions of HazCom because they can pose a covered health or physical hazard when the dose is high enough. For this reason, the proposal was misleading. Operators who produce low hazard chemicals, such as limestone or salt, could have wrongly concluded that their product was not covered by HazCom. There is evidence that exposure to an excessive amount of respirable dust, even dust that does not cause health effects at lower exposure concentrations, can produce reversible health effects. Also, in a mine environment, nuisance particulates are often contaminated with other hazardous chemicals.

ACGIH considers the term "nuisance particulates" as obsolete. In the past, the ACGIH defined and listed examples of nuisance particulates to provide guidance to industry for the purpose of controlling inhalation exposures to those dusts. Based on the 1973 ACGIH Threshold Limit Values, we currently enforce an exposure limit for nuisance dusts of 10 milligrams per cubic meter (mg/m^3) as a time-weighted average (TWA). The current edition of the ACGIH TLV's does not list substances as nuisance particulates. In addition, our proposed air quality standard (54 FR 35760), published August 29, 1989, would have established a 5 mg/m^3 respirable mine dust limit applicable to all nonspecific dusts, including those currently regulated as nuisance particulates. These current and proposed rules demonstrate that MSHA has considered nuisance particulates as a health hazard for at least 20 years. Because the HazCom proposal would have covered dusts that posed a covered safety or health hazard, even if the dust had previously been categorized as a nuisance particulate, we consider the HazCom interim final rule to be consistent with our proposal and OSHA's HCS.

Radiation hazards. We proposed to exclude ionizing or non-ionizing radiation hazards from HazCom, consistent with OSHA's HCS. We have also incorporated this exemption in the interim final rule.

Some commenters suggested that we not exempt radiation from HazCom because, if radiation is a potential hazard in the work area, this should be communicated to miners. Another commenter suggested an exemption for

non-product-specific physical hazards, such as noise, vibration, and hot environments, associated with the mining environment.

Radiation hazards are covered under other Federal requirements and we have standards for metal and nonmetal mines that require hazard notification for radiation hazards, including the posting of hazard warning signs. A chemical with radioactive properties that also presents other types of health and physical hazards is not exempt from HazCom. We do not consider non-chemical-specific physical hazards (such as heat stress, ergonomic hazards, or hearing loss) relevant to this rulemaking because HazCom is meant to address chemical hazards.

Wood and wood products. We proposed to exempt from HazCom wood or wood products which do not release or otherwise result in exposure to a hazardous chemical under normal conditions of use. We did not receive comments regarding this exemption.

Wood products, such as lumber, plywood, and paper, are easily recognizable in the work area and pose a risk of fire that is obvious and well known to the miners working with them. Wood dust is not generally a wood "product" but is created as a byproduct during sawing, sanding, and shaping of wood. We believe that it is necessary for you to inform miners about the hazards of wood dust and chemically-treated wood and precautionary measures to minimize or prevent exposure.

The interim final rule contains specific language clarifying that wood dust and wood treated with a hazardous chemical, such as wood preservatives or pesticides, are not exempt from HazCom. This exemption is consistent with OSHA's HCS on the coverage of wood and wood products. In response to comments, we exempted wood and wood products from the labeling requirements.

2. Hazardous Waste

We had proposed an exemption for hazardous waste from both the labeling and MSDS requirements when the waste is covered by the Environmental Protection Agency (EPA) under the Solid Waste Disposal Act, as amended by RCRA. Under EPA standards, a waste analysis is required as part of the permit to burn or dispose of hazardous waste. However, EPA does not require the waste analysis to specify the chemicals' hazards or provide that it be made available to employees. MSHA indicated in the preamble to the proposal, that OSHA also excluded hazardous waste regulated by EPA from

coverage under its rule. MSHA requested comments on the appropriateness of exempting other hazardous waste not regulated by EPA from the labeling and MSDS requirements of the proposal. A number of mine operators have EPA permits to burn hazardous waste in their kilns as a supplemental fuel source or dispose of hazardous waste in their tailings.

We received numerous comments on this exemption. Some commenters supported the proposed hazardous waste exemption in general, agreeing with our rationale. Commenters suggested the following specific revisions to our proposed hazardous waste exemption:

- That we exempt wastes not regulated by EPA, particularly those reused on-site or sent off-site for recycling, such as waste oil, antifreeze, and solvents.
- That we exempt process-related waste, such as tailings, mine waste, and other hazardous waste generated by the mine, because they are already regulated by us and EPA and the inclusion of these materials in HazCom labeling and training requirements could lead to serious conflicts with other standards.
- That we define hazardous waste to include garbage, refuse, sludge, and other discarded materials including solid, liquid, semisolid, or contained gaseous material resulting from mining because you should inform potentially exposed miners about the hazards associated with scrap and discarded material at the mine.
- That we extend our exemption to include hazardous waste regulated under State programs pursuant to the requirements of RCRA.

Several commenters suggested that we treat hazardous waste exposures as OSHA does, by not requiring HazCom training for those miners who are exposed to EPA regulated hazardous waste. One commenter specifically suggested that we follow OSHA's requirements for hazardous waste operations in 29 CFR 1910.120(e) by requiring training only for specific hazardous waste operations and not for all types of hazardous waste handling.

Since our proposal was published, an increasing number of mining operations have obtained permits to burn hazardous wastes in their kilns. Some bury waste in a landfill or dispose of their own wastes from the mining process. There are 55 mining operations burning hazardous waste and waste products with an average of 16 miners per site. Wastes burned include biological wastes, pesticides, herbicides, waste oil, heavy metals, and tires. Some, but not all, of these hazardous wastes

are regulated by EPA. A few operations have EPA issued permits that allow them to burn hundreds of kinds of hazardous wastes, up to 260 different kinds. Many are burning thousands of gallons of waste products a year in their kilns. Two operations handle more than 15 million gallons per year and 12 operations handle more than 1 million gallons per year. Most handle either liquid or solid wastes; some can accommodate both. Some of these wastes would meet HazCom's definition of a health or physical hazard or both.

NIOSH stated that hazardous waste not regulated by the EPA or other existing statutes should not be exempt from HazCom because to do so would be contrary to the intent of HazCom. The rulemaking record indicates the need for miners working with hazardous waste to be informed of its hazards either as a mixture or its individual components. We have determined that, for HazCom to be effective, it must include all hazardous chemicals to which miners may be exposed and, therefore, the interim final rule does not exempt hazardous waste regulated by the EPA. Other waste chemicals are subject to the same requirements as every hazardous chemical on site.

After a careful review of all comments received on this issue, we have determined that it is necessary to cover hazardous waste under our standard. Although OSHA excludes coverage of hazardous waste regulated by EPA, OSHA has other specific standards directed to hazardous waste operations. (29 CFR 1910.120). OSHA was required to issue these standards by § 162, title 1 of the Superfund Amendments and Reauthorization Act of 1986 (SARA). We do not have similar statutory requirements or standards regarding hazardous waste operations and believe that we would be denying protection to miners handling hazardous waste if we were to exempt it from coverage. Labels are an important component of an effective hazard communication system. Requiring all hazardous waste to be labeled will eliminate any confusion as to whether the waste is covered by the EPA. Accordingly, the interim final rule does not exempt hazardous waste from coverage.

Under the interim final rule, you must provide each potentially exposed miner with MSDS information about the hazardous waste to the extent that it is available. You must make any information available to the miner or designated representative which identifies its hazardous chemical components, describes its physical or health hazards, or specifies appropriate protective measures. If the chemical is

a hazardous waste and an MSDS is unavailable, the chemical is hazardous if any of the sources in the Identifying Hazardous Chemicals, Table 47.11, indicates it is a physical or health hazard. We believe that this change in the interim final rule does not impose an additional burden on you because existing labels on containers of hazardous waste brought onto mine property that meet the comparable requirements of other Federal or State regulations will fulfill the labeling requirements of this interim final rule.

HazCom requires you to provide the information needed for labels and MSDSs, through any available information and training, to miners who work with hazardous waste. Some of this information is available from the EPA permit, your analysis of the waste, or the supplier of the waste material. If the supplier of the hazardous waste prepares any document for compliance with EPA or OSHA standards that contains the same types of information as required for the label and MSDS, we expect you to obtain a copy of these documents and to provide miners with access to them.

3. § 47.82 Exemptions From Labeling

We proposed to exempt from HazCom's labeling requirements those hazardous substances regulated and labeled under the authority and standards of other Federal agencies. Commenters objected to the proposal's referencing the laws and standards of other organizations and agencies, considering their inclusion to amount to "incorporation-by-reference." They stated that the rule does not include these documents, that they are not useful in understanding HazCom, and that our rules will become dependent on out-of-date material or require rulemaking to keep them current. The proposal had referenced the Consumer Product Safety Act; the Federal Hazardous Substances Act; the Federal Food, Drug, and Cosmetic Act; the Federal Insecticide, Fungicide, and Rodenticide Act; the Solid Waste Disposal Act; and the Resource Conservation and Recovery Act. Commenters suggested that we replace these references with simple operational definitions that would be understood by the miner.

The interim final rule includes these references to clarify which toxic materials, hazardous substances, and consumer products are exempt from HazCom labeling. We consider these references as informational because they inform you of the limits of your responsibility rather than imposing an obligation. To the extent practical, the

interim final rule simplifies the references by not including legal citations. Use of these references to specify exemptions from HazCom means that another Federal agency requires labeling of the hazardous chemical. A simple operational definition would be that you do not have to further label a hazardous chemical brought onto mine property if it already has a label indicating its identity and appropriate hazard warnings.

We expect that most hazardous chemicals regulated by another Federal agency are labeled by the manufacturer with information about their identity, hazards, precautions for normal use and emergencies, and phone numbers for additional information. To avoid duplicate Federal standards, we will accept pre-existing hazard labels that comply with the labeling requirements of another Federal statute or standard for compliance with HazCom. For example, if a hazardous substance or waste is produced at the mine, and it is covered by the standards of another Federal agency, you must label it first in accordance with those standards. Consistent with the purpose of HazCom, if the hazardous chemical is not labeled in accordance with another Federal statute or standard, you must label it in accordance with the requirements in § 47.32 (label contents) of HazCom.

Raw material. We proposed to exempt the raw material mined or milled from the labeling requirements of HazCom while on mine property. Many commenters strongly supported the proposed raw material exemption. Some of these commenters recognized the impracticality of affixing and maintaining labels on every ore car or on each bin or hopper containing the mined material and believed that such labels would be of little benefit. One commenter stated that they currently labeled bins of their raw material but found that the labels were difficult to read due to the dust covering them. Other commenters believed that, generally, operators inform miners about the hazards of the raw material being mined and this information could be considered common knowledge. Another commenter stated that while they did not disagree with a labeling exemption for the raw material mined—

* * * the final rule should re-state the operator's duty to train and inform miners about the hazards inherent in the mineral being mined and by-products of the mining process such as crystalline silica, radon progeny, etc.

This commenter stated further that you should at least make an MSDS on these substances available and warn miners in a variety of ways. Among those commenters supporting the raw material exemption, one recommended that we clarify that a container of a raw material that has undergone a chemical reaction with other constituents, and thus is not a mixture, would not have to be labeled even if a hazardous chemical may have been added to it during processing at the mine. This commenter further stated that—

[w]hile the process container where the hazardous chemical is added may need to be labeled (at least where the process does not result in an instantaneous chemical reaction), the container subsequently holding the commodity produced for sale by the operator would not constitute a "mixture" and should not be labeled.

A few commenters disagreed with our proposed raw material exemption and requested that HazCom require labeling of all containers of hazardous raw material. One of these commenters expressed concern about the legibility and adhesion of labels, yet was confident that you could develop workable solutions. Other commenters stated that unlabeled containers of hazardous chemicals must be labeled under our existing labeling standards.

The interim final rule exempts containers of raw materials from labeling while they are on mine property. For any raw material that is determined to be a hazardous chemical, you must supply labeling information when requested to downstream users, to maintain MSDSs, and to train miners about its physical and health hazards. We expect that miners are familiar with the hazards of the material being mined because they must receive training on the health and safety hazards of their job under 30 CFR parts 46 or 48. If you add a hazardous chemical to a container of raw material, however, you must label the container for the hazardous chemical added if the mixture or the newly created compound meets the criteria in the hazard determination section of HazCom (§ 47.11).

Pesticides, food, and consumer products. The proposal included exemptions from labeling for pesticides; food, food additives, and color additives; and consumer products which are required to be labeled under standards issued by other Federal agencies. The interim final rule is generally consistent with the proposal and with OSHA's HCS. The applicable definitions of the substances addressed in these exemptions are those provided by the governing statutes and standards.

Although there were some commenters who addressed these exemptions, few had specific comments. Among those who did comment, many supported our exemption of consumer products. Several suggested that we not require coal mine operators to include consumer products in HazCom programs because this would result in meaningless storage of countless MSDSs. Another believed that we should clarify that you have a responsibility to maintain the labels that come on these hazardous materials.

Commenters agreed with our intent to have a similar provision with OSHA's HCS, stating that separate rules for consumer products would be redundant and serve no purpose. Another commenter suggested that we also exempt, as per OSHA's standard, drugs, cosmetics, medical or veterinary devices, and materials intended for use as ingredients in such products (e.g., flavors and fragrances). In regard to our proposed consumer product exemption, one commenter stated:

* * * consumer products already possess adequate labels with hazard identification and safe use instructions. Since no one knows the hazards of a product better than its manufacturer, the safest possible use of the product is in accordance with the manufacturer's recommendations * * *. Using products according to manufacturer's recommendations would result in exposures that are very small (this is minute or trace amounts) and would not pose a physical or health risk to miners.

We received a few comments objecting to the exemption of consumer products from HazCom's labeling requirements. A few commenters suggested that consumer product labels provided by manufacturers may not provide adequate warning, given the use of these products at the mine. One of these commenters stated:

* * * consumer products with warnings on adequate ventilation or that require the use of personal protective equipment cannot be presumed safe for use in the underground mining environment. Further, many mining uses of consumer products may result in exposures that were not contemplated by the manufacturer packaging the product for consumer use. * * * Many consumer products are potential fuel sources for fires (e.g., aerosol solvents or paints). Further, exposure to these volatile solvents may adversely affect the seals and insulators on permissible equipment or adversely alter the explosive characteristics of the atmosphere in underground coal mines.

In response to the concerns expressed by commenters, the interim final rule states specifically that consumer products are exempt from labeling when they are labeled under the standards of another Federal agency, such as the

Consumer Product Safety Commission. Consumer products are exempt from HazCom where you can demonstrate that they are used at the mine in the same manner as in normal consumer use. Because consumer products are labeled under the authority of another Federal agency, and these labels generally provide for the listings of chemical identities and hazard warnings, there is no need for additional labeling standards.

One commenter suggested that we provide operators with a list of exempt products commonly found on mine property. We have determined that a list of exempt products commonly found on mine property is neither simple nor appropriate. These products are only exempt when used in the same way as they would normally be used by a consumer. A list could lead you to believe these were exempt under all circumstances. Some exempt items could be overlooked and some that are exempt from labeling may not be exempt from other provisions of HazCom. Even for exempt products, for example, you may not deface or remove labels from containers of hazardous chemicals brought onto mine property. If they are repackaged or transferred at the mine, you must communicate such labeling information to the miner and, if necessary, label the new container.

The interim final rule also includes an exemption from HazCom's labeling requirements for pesticides labeled under standards issued by other Federal agencies. As long as the pesticide is kept in the original container with its label intact and legible, it is exempt from the labeling provisions of this rule. We believe that this partial exemption informs and protects the miner and does not place an undue burden on you. We intend that all pesticides be labeled with their identity, hazards, and precautions for safe use. We believe that existing labels on containers of pesticides brought onto mine property that meet the labeling requirements of other Federal or State standards will fulfill the labeling requirements of HazCom.

The purpose of pesticide labeling is mainly the protection of workers exposed to the pesticide either while handling it or through inadvertent contact with something that has been treated with it. In the case of the other substances, the purpose of the labels is more general consumer protection. The interim final rule does not include a specific labeling exemption for foods, food additives, and color additives used for personal consumption because they are exempt from the full scope of HazCom. A full discussion of this issue

is in the Exemption section of the preamble.

Other suggested exemptions. Many commenters specifically recommended that we exempt *de minimis* exposures to, or *de minimis* amounts or concentrations of, hazardous chemicals from the labeling requirements. Most of the commenters believed that labeling should focus on serious risks rather than on those that are trivial. Some commenters suggested that we use 5% silica in the mined ore as a *de minimis* threshold below which labeling would not be required. One commenter recommended 1% silica, rather than 5%, for a *de minimis* threshold. Another commenter recommended basing a *de minimis* threshold on a chemical's TLV or PEL. This commenter suggested that employers would simply need to assess whether a hazardous chemical is present in the work area at a level meeting or exceeding its PEL or TLV. Further, this commenter stated that if the chemical did not have a PEL or TLV, no *de minimis* threshold would apply.

We determined that a *de minimis* threshold for silica is inappropriate because respirable crystalline silica is a human carcinogen and the potential for exposure is too great. We discuss this issue more fully in the next section of this preamble (4. Other exemptions discussed in proposal).

Commenters also recommended that we exempt treated wood products from any labeling requirements because labeling every timber in a mine would create an excessive burden on operators with no increase in protection to the miner.

In response to comments, we are exempting from labeling requirements wood and wood products that have been treated with a hazardous chemical and wood which may be sawed or cut, generating dust. Wood and wood products, including lumber, that do not present a health or physical hazard are exempt from the full scope of HazCom as an "article."

4. Other Exemptions Discussed in Proposal

In the preamble to the proposed rule, we requested comments on a variety of options for the scope of the HazCom standard. These alternatives covered exemptions for the size of the mine, the commodity extracted, the work area, or the amount of hazardous substance. For the most part, the interim final rule does not adopt these exemptions for the reasons discussed in the following paragraphs.

Small mines. The rulemaking record contains a number of comments suggesting that we exempt small mines

from HazCom. Commenters stated that HazCom would create additional expenses and recommended that we modify the interim final rule to exempt small operations, especially those with a workforce of 10 or fewer.

We do not exempt small mines from overall compliance with HazCom because chemical hazards are present at all mines, regardless of size, and miners at small operations have the right to know if they are exposed to hazardous chemicals. To address the needs of small mines, however, as well as the variability in the mining industry, the interim final rule allows you to design the HazCom program for the conditions at your mine. To further assist you, and especially small mine operators, we will prepare generic HazCom programs and MSDSs. Many of these aids are available now and the remainder will be available soon. You can contact the National Mine Health and Safety Academy at 304-256-3257 or visit our website at www.msha.gov to find out what is available. Also, OSHA has developed training materials for its industries, such as a generic MSDS form, a model hazard communication program, and the HCS Compliance Guide. Many are available from OSHA's website at www.osha.gov and can be adapted for use at mining operations. You can use these as models for your own program.

Depending on the size of the mine and the number of hazardous chemicals at the mine, you may have little to add to the generic program. We anticipate that, with minimal effort, the majority of small mines will be able to prepare the written program, MSDSs, and labels, and integrate HazCom training into their established training programs.

Common minerals. We considered an exemption from HazCom for certain common minerals (such as coal, sand and gravel aggregates, crushed stone aggregates, and clay) and those minerals containing less than 5% silica and no other hazardous chemicals. In the preamble to the HazCom proposal, we requested comments on—

- The appropriateness of exempting certain minerals;
- The appropriate criteria for making a determination for exemption;
- The degree to which miners are aware of the hazards of these minerals;
- The level of silica in such minerals necessary before the mineral would be considered hazardous;
- How these minerals are used and handled by downstream employers; and
- How we could best publicize and provide hazard information on these substances to you and miners.

A number of commenters addressed the scope of the common minerals

exemption. Some expressed support for the exemption and stated that natural rocks and minerals should not be classified as chemicals for the purpose of an MSDS or other HazCom requirements. Others stated that the exemption for minerals containing less than 5% silica is warranted because these minerals do not constitute a hazard, and the exemption would preclude duplicate regulatory requirements and unnecessary expenditures. One commenter stated that such an exemption is especially appropriate for minerals designated as carcinogenic merely because they contain greater than 0.1% silica. Another commenter stated that labeling common minerals is unnecessary because 30 CFR part 48 (and part 46) requires miners to be trained to recognize the hazards of the product being mined.

Commenters also suggested that we exempt specific minerals from HazCom. For example, one commenter stated that we should exempt coal and limestone. In addition, with regard to exempting coal, other commenters stated that the hazards of respirable coal mine dust are strictly controlled through extensive sampling and monitoring programs. Other commenters recommended that we modify the standard to exempt dimension stone quarries and iron ore pellets. One commenter urged us to specify which minerals are of concern to us and suggested an exemption for silica flour or certain industrial sands based upon their purity and particle size.

Several commenters objected to our proposed exemption of common minerals. One stated that most mining products are used by OSHA-regulated facilities and, as such, OSHA already requires that these facilities keep MSDS forms up-to-date for customers, label containers, and fill out the appropriate transport forms. Another commenter expressed concern that, if operators are responsible for preparing the MSDSs and labels, the common minerals exemption could lead to violations of the OSHA HCS for downstream general industry customers. Others objected to the common minerals exemption because it would send conflicting signals to miners; it is inconsistent with OSHA triggers and MSDS requirements; and it fails to provide health protection for miners in the sand and gravel, stone, clay, and shell dredging operations. One commenter stated that these minerals still present sufficient hazards to require MSDSs and training and HazCom should cover them, even though they are common or silica is present in small proportion to the total material.

Some commenters suggested that we exempt or provide limited coverage to mining industry sectors with a low degree of risk. One suggested specifically that we exempt the brick industry from HazCom because the risk posed to miners in the brick industry is lower than that experienced in other mining operations due to the way the industry handles the clay and shale. According to this commenter, there is no reason to regulate clay and shale, the brick industry's principal raw materials, because HazCom relates to free silica and most clay and shale have $\leq 5\%$ free silica. In addition, this commenter indicated that MSDSs are unnecessary because exposure to silica is a primary part of the training programs administered by brick manufacturers.

We do not agree that the overall degree of risk encountered by miners in a given industry segment is a viable argument for totally exempting an entire mine or commodity from coverage under HazCom. A major concern is that miners are exposed to chemicals without knowing their hazards and, thus, they may not follow the proper procedures for handling or using these chemicals. The extent of risk is not a determining factor in deciding whether or not you have to communicate information on hazardous chemicals. Miners have the right to know that they are being exposed to a potential hazard. As long as the potential for exposure exists in the work area and the chemical is hazardous, HazCom applies.

For these reasons, the interim final rule does not exempt minerals containing 5% silica or less or other hazardous chemicals or certain common minerals, such as coal, clay, and dimension stone. The promulgation of such an exemption would imply that these minerals could not pose a health hazard to exposed miners. On the contrary, depending on the airborne concentration of the dust and other circumstances regarding exposure, respirable crystalline silica in these minerals or respirable coal mine dust may cause pneumoconiosis or cancer. The interim final rule is consistent on this point with OSHA's HCS.

Nonfuel mining. One commenter recommended that we exempt the nonfuel mining industry from HazCom. This commenter questioned whether we have demonstrated that such a broad-based standard is necessary for the nonfuel mining industry, given that HazCom would duplicate our existing training and labeling standards.

Based on the findings of the NIOSH National Occupational Health Survey of Mining (NOHSM) and our experience in the mining industry, we concluded that

a HazCom rule applicable to coal, metal, and nonmetal mines is appropriate because all mines use hazardous chemicals, and there are a number of hazardous chemicals common to all types of mines, including non-fuel mines. Fuel oil, solvents, and paint are just three examples of hazardous chemicals used at non-fuel mines. Non-fuel mines report the most chemical burn injuries to MSHA. HazCom is broadly written and performance oriented in recognition of the diversity among mining operations and independent contractors. Our intent is that all miners, including those working in the nonfuel mining industry, have access to information about the chemical hazards to which they are exposed at the mine. This decision is consistent with the mandate of the Mine Act to protect all miners to the extent feasible.

De minimis requirements. In the HazCom proposed rule, we solicited comments on whether we should establish *de minimis* criteria for hazardous chemical exposure in general. *De minimis* or trivial risks are those below the threshold of regulatory concern.

A few commenters stated that, for HazCom to be effective, the final rule must contain an exemption for *de minimis* chemical exposures. These commenters urged us to specify minimum quantities for the substances covered by the standard. Commenters suggested that we exclude exposures that are less than one-half of any applicable PEL or ACGIH TLV, or where the health risk is not significant. Some felt that HazCom should address only those chemicals that exceed a PEL or ACGIH TLV. One commenter stated that a meaningful *de minimis* provision could be provided—

- By clarifying the definition of article similar to that found in the mixture definition;
- By defining a significant health risk; and
- By stating a reasonable and consistent interpretation of the terms “minute” or “trace.”

A few commenters recommended that we exclude trivial exposures to avoid unnecessary and misleading labeling and the creation of the functional equivalent of a “Delaney Clause.”

[**Note:** The Delaney Clause is an amendment to the Food, Drug, and Cosmetic Act (21 U.S.C. 348). It requires the Food and Drug Administration to prohibit the use of any food additive that is carcinogenic without regard to the quantitative level of risk.]

Commenters wanted us to set a *de minimis* concentration below which you

would not have to consider whether a substance is hazardous. There are highly toxic substances, however, which can cause adverse health effects from the absorption or inhalation of tiny amounts. HazCom is intended to address all hazardous chemicals at mines. The range of hazards and concentrations are too diverse to address through a single measurement. A *de minimis* exemption, therefore, would not provide sufficient protection to miners and would not address the true issue of concern, informing miners of potential hazards.

Likewise, requiring information disclosure only in situations where exposure might exceed a PEL or ACGIH TLV is not consistent with the purpose of the rule. Exposure limits address a limited number of the hazardous chemicals encountered at the mine. Also, PELs are used to control inhalation exposures. Because the definition of exposure in HazCom includes absorption through the stomach or skin, in addition to the lungs, the exposure limits might be unrelated to the total exposure experienced by a miner. In certain circumstances, the most significant route of exposure may be through the stomach or skin. We have received reports of injuries and illnesses among miners as a result of skin contact with cyanide solutions, cement and trona dusts, and mercury, and as a result of ingesting lead litharge.

Laboratories. The proposal requested comments on whether laboratories should be exempt from HazCom, primarily because OSHA’s HCS [29 CFR 1910.1200(b)(3)] partially exempted laboratories. OSHA, however, regulates laboratories under both its HCS (29 CFR 1910.1200) and its laboratory standard (29 CFR 1910.1450). The laboratory standard supplements the HCS.

The OSHA HCS requires labels, MSDSs, training, and access. The heart of the OSHA laboratory standard is the Chemical Hygiene Plan. The Plan, which contains elements similar to HazCom’s written program, must be reviewed annually. It also requires detailed descriptions of personal protective equipment, standard operating procedures, and engineering controls. Whatever OSHA does not cover under its HCS, it covers in its laboratory standard. The OSHA laboratory standard requires training; access to the plan and “all known reference material * * * including, but not limited to, Material Safety Data Sheets * * *; labels and MSDSs; hazard determination for chemicals produced, including by-products; hazard determination, labels, and MSDSs for

chemicals produced for users outside the lab itself; and records of exposure monitoring and medical exams.

Unlike OSHA, we do not have specific standards addressing hazardous chemicals in laboratories. At this time, we do not plan to develop a separate standard to address laboratory hazards.

Several commenters urged us to exempt laboratories. One commenter stated that small laboratories are exempt from OSHA’s standards. Another commenter stated that both OSHA’s HCS and EPA’s SARA exempt laboratories of any size when under the direct supervision of a technically qualified individual. Some commenters supported the application of training requirements to laboratories on mining property unless the lab has trained chemists. Others recommended that we exempt laboratory use of chemicals from HazCom because such use is unique and our training standards already cover laboratory hazards.

Most commenters, however, supported our coverage of laboratories within HazCom. Some commenters found our approach reasonable because covering mine laboratories would preclude the need for us to develop a separate standard to address laboratory hazards, as was done by OSHA.

We agree that laboratories in mining should be subject to the full scope of the standard, including training, with no specific exemptions. Laboratories found in the mining industry differ in several respects from those common to general industry, such as research facilities. Although there may be a few large-scale laboratories in the mining industry supervised by trained chemists, our experience indicates that most mine laboratories are small-scale operations devoted to quality control or process control, with relatively few trained chemists.

Compared to research facilities or laboratories in the chemical manufacturing industry, quality control laboratories in the mining industry use relatively few chemicals and analytical methods. Most of these mine laboratory workers receive on-the-job training. This training can be inadequate in addressing the hazards of the chemicals to which the laboratory workers are exposed. MSHA data, reported under the requirements of 30 CFR part 50, cite illnesses or injuries in laboratories caused by improper mixing of chemicals, mercury spills, use of inadequate or inappropriate personal protective equipment, use of improper procedures, and improper use of controls or inadequate ventilation.

The interim final rule does not exempt laboratories on mine property,

but gives you the latitude to create a training program based upon the hazards identified. We recognize that these programs may differ from work area to work area because of the different chemicals used. We expect your training program to vary depending on the miners' training needs. To exclude miners working in laboratories from HazCom would not be in keeping with our mandate to prevent mine-related occupational injuries and illnesses. After reviewing the comments and the rulemaking record, and based on the presence of hazardous chemicals in the laboratories, we have concluded that it is necessary to include mine laboratories under the scope of the interim final rule.

J. Subpart J—Definitions

HazCom is an information and training standard focused on chemical hazards. Table 47.91 defines the terms needed for understanding the concepts and requirements in the standard. We defined some terms to have a special meaning for this standard, but tried to stay consistent with the ordinary meaning of the terms.

1. Using MSHA and OSHA Terms

We used *employee* in the proposed rule to identify the working person who may be exposed to a hazardous chemical. The proposal included a sentence to clarify that the standard did not apply to individuals, such as office workers, who encounter hazardous chemicals in non-routine instances.

Commenters recommended that we use the term *miner* instead of *employee*. Many commenters pointed out that *miner* is defined in the Mine Act, and that using this term would be consistent with our statute. Because the term *miner*, as defined in the Mine Act, means any individual working in a coal or other mine, including office workers, some suggested that we could add an exemption for office workers in a separate section.

In response to comments, we replaced the term *employee* with the term *miner* throughout the interim final rule, where we thought it was appropriate. The term *miner* does include office workers. We do not intend to exempt office workers from HazCom. The proposal had attempted to clarify that HazCom does not apply to individuals exposed to a hazardous chemical in extraordinary, non-routine situations. We intended this statement in the proposal to complement the scope and emphasize that individuals exposed to a hazardous chemical under normal conditions of use or in a foreseeable emergency, regardless of their job category, are

covered by HazCom. For example, you must ensure that hazardous chemicals normally used in or around an office, such as toner for the copy machine, are labeled appropriately; obtain an MSDS for them, and instruct the exposed office workers about their hazards and safe work procedures. Other Federal agencies regulate hazardous chemicals used in or around an office and, therefore, they should already be labeled and have an MSDS available from the supplier.

We defined *employer* in the proposal as a person engaged in a business where chemicals are either used, distributed, or are produced for use or distribution, including a contractor or subcontractor. We intended the term to describe independent contractors on-site, as well as downstream or OSHA jurisdiction customers. In response to the general comment that we should rely on mining terms, in the interim final rule we use the more familiar designation *operator* to mean both the mine operator and independent contractor as defined in the Mine Act. In the preamble, we often use the term "you" instead of "operator." We use the separate terms *mine operator* and *independent contractor* when we want to differentiate between the mine operator responsible for the whole operation and the contractors and subcontractors who have the responsibilities of an operator for specific aspects of the mining operation. We determined that a definition was not necessary for *customer* because we use the term as it is commonly understood to mean the downstream users who purchase your products.

We defined *workplace* in the proposal to mean a mine, establishment, job site, or project at one geographical location containing one or more work areas. The term *mine* is defined by the Mine Act and, like *miner*, is more familiar to the mining industry. *Mine* means the same thing as *workplace* for purposes of HazCom. Accordingly, we have substituted the term *mine* for *workplace* throughout the interim final rule.

Some commenters suggested that we add definitions for terms not proposed. Several commenters requested that coal mine be defined. The definition for mine in the Mine Act includes coal mines and coal preparation facilities. A number of commenters wanted independent contractor defined. This term is defined and commonly used in other MSHA standards and is well-understood by the mining industry. Separate definitions for these terms are unnecessary.

2. Material Impairment and Significant Risk.

Commenters suggested revising definitions for *exposed*, *hazardous chemical*, and *health hazard*, among others, so the terms would include the concepts of material impairment and significant risk. They suggested deleting the phrase "or potentially subjected" from the definition of *exposed*. (The definition would then read: "Being subjected to a hazardous chemical in the course of employment * * *") Commenters also objected to the proposal's definition of *hazardous chemical* because it addressed "any chemical, in any quantity, at any time." A health hazard, according to a commenter, should be a health hazard only under conditions of intended use.

If these changes were made in HazCom, the interim final rule would have taken a significant departure from its intended purpose. A fuller discussion of material impairment and significant risk is found under Purpose and Scope in this preamble. We did not change the definitions for *exposed*, *hazardous chemical*, and *health hazard* in HazCom to include the concepts of material impairment or significant risk.

3. § 47.91 Definitions of Terms used in this Part

A number of the terms defined in HazCom are commonly used by chemists, physicists, and health and safety professionals to identify and describe specific types of physical hazards or physical properties of chemicals. In keeping with the plain language initiative, we have defined terms in the clearest way we could, sometimes balancing technical precision with general clarity. We believe this subpart provides you with the information you need to understand what HazCom requires and to comply with it.

Access. The interim final rule, like the proposal, defines *access* as the right to examine and copy records. One commenter wanted this definition to specify that you must provide access without cost to the miner. Another commenter did not want the definition to include the right to copy records. Other commenters suggested that we consolidate the access provisions in a single subpart rather than repeat them for each subpart.

HazCom contains the term *access* principally in the subpart Making HazCom Information Available where, in response to comments and for clarity and ease of use, we consolidate access requirements from several sections of the proposal. Because of the potentially

large amount of detailed, technical HazCom material, particularly MSDSs, we believe that the intent to provide information to miners is best served if miners have the right to a copy of the material. The HazCom material may be too voluminous to understand without an opportunity to review it all thoroughly. The cost for providing free copies is a condition for providing access and not appropriate in a definition.

Article. *Article* was defined in the proposal to clarify that many manufactured products commonly found on mine property are exempt from HazCom. Under the proposal, we defined article to mean a manufactured item other than a fluid or a particle that—

(a) Is formed to a specific shape or design during manufacture;

(b) Has end-use functions dependent upon its shape or design; and

(c) Under normal conditions of use, releases no more than very small quantities (that is, minute or trace amounts) of a hazardous chemical, such as the off-gassing of plastic pipes, and does not pose a physical or health risk to employees.

Numerous commenters agreed with the definition in the proposed rule, except for paragraph (c). Commenters claimed that paragraph (c) was unclear about how much of a hazardous chemical released from a manufactured item under normal conditions of use would constitute either very small, minute, trace, or *de minimis* quantities. Commenters also asked that we clarify that *article* means conveyor belts, repair steel, and other equipment and supplies commonly found at mines. To determine when an article is a hazardous chemical, some commenters suggested that the definition include a *de minimis* provision, while other commenters wanted a significant risk provision. One commenter wanted the term “under normal conditions of use” deleted from the definition because it limits the scope of the standard.

Another commenter expressed concern that iron ore pellets would be considered a hazardous chemical under HazCom. Iron ore pellets, like bricks, are manufactured articles. Before they are pellets, however, the iron ore is a raw material which contains respirable crystalline silica. Both the respirable dusts of iron ore and silica are inhalation hazards because they can cause lung damage. When they can pose a hazard to exposed workers, these raw materials are covered by HazCom. As raw material, iron ore is exempt from labeling under HazCom while on mine property. The pellets are exempt from

HazCom when they are formed into articles, provided that they do not release more than insignificant or trace amounts of a hazardous chemical and do not pose a physical or health hazard.

We agree with commenters that the definition created confusion. We believe that the confusion arose because the defined term also included the criteria for exemption, which was contrary to the ordinary understanding of the word. An article is first of all a class of material things. An item manufactured to a shape or design that determines its end-use functions will be an article, in the ordinary sense of the word, whether it gives off trace amounts of a hazardous chemical or larger amounts. The exemption of an article, however, is dependent on how the article is used.

To clarify the standard's intent, we moved proposed paragraph (c) from Definitions to Exemptions to indicate that only articles that give off no more than insignificant or trace amounts of a hazardous chemical, and are neither a physical nor a health hazard, are exempt. The definition in the interim final rule describes manufactured goods, other than a fluid or particle, without regard to the chemical hazard produced. The Exemptions subpart now addresses the distinction between exempt and non-exempt articles. We believe that this change is non-substantive, and clarifies the interim final rule. The interim final rule uses the same language as the proposal except for the movement of the last provision to Exemptions.

To illustrate the intent of the change, suppose you purchase a tire and use it on a haul truck. While on the truck, the tire may give off a trace amount of a hazardous chemical. Under this use, the tire is an article exempt from HazCom. When the tire is worn out and can no longer be safely used on the truck, you may send it to a mine that uses tires to supplement the fuel for a kiln. While burning, the tire gives off significant amounts of hazardous chemicals. The tire is still an article, but no longer exempt from HazCom. The miners working at the other mine's kiln must be trained about the chemical hazards associated with the burning tire.

Chemical. The interim final rule, like the proposal, defines chemical as any element, chemical compound, or mixture of these. One commenter assumed that, for the purposes of HazCom, the definition of chemical could be interpreted broadly to include the byproducts of chemical reactions. Byproducts of chemical reactions are separate chemicals. We intend that you address any byproducts as you address other chemicals you produce. You can

either include the byproducts on the MSDS and label or, if appropriate, develop a separate MSDS and label.

Chemical name. The proposal defined *chemical name* as the scientific designation of a chemical in accordance with the nomenclature system developed by the International Union of Pure and Applied Chemistry (IUPAC) or the Chemical Abstracts Service (CAS) rule of nomenclature, or a name that will clearly identify the chemical for the purpose of conducting a hazard evaluation. A commenter recommended that the definition specify Registry of Toxic Effects of Chemical Substances (RTECS) numbers, as well as CAS numbers. Although RTECS numbers are not as widely accepted as CAS numbers as a means of identifying a specific chemical, they are unique and precise and may be used, as well as IUPAC numbers. HazCom retains the proposed definition for chemical name.

Common name. In the proposal, we defined *common name* as any designation or identification, such as a code name, code number, trade name, brand name, or generic name, used to identify a chemical other than by its chemical name. Commenters generally supported the proposed definition for the term *common name*, which remains the same in the interim final rule. This definition is consistent with the OSHA HCS.

Consumer product; food; food additive; color additive. We used the terms *color additive*, *food additive*, *consumer product*, and *food* in the proposed rule and commenters requested that we define them. One commenter suggested that “EPA's consumer products definition is more practical than MSHA's and achieves the result MSHA intended.” The interim final rule includes a definition for consumer product which is essentially the same as the one in the Consumer Product Safety Act (15 U.S.C. 2051 *et seq.*). We do not define food, food additive, or color additive in the interim final rule. They are common terms and we use them in the sense in which they are normally understood.

Container. As proposed, the interim final rule defines *container* as any bag, barrel, bottle, box, can, cylinder, drum, reaction vessel, storage tank, or the like that contains a hazardous chemical. The definition further states that pipes or piping systems; conveyors; and engines, fuel tanks, or other operating systems or parts on a motor vehicle (such as tires) are not considered to be containers.

One commenter wanted pipes that contain hazardous chemicals to be considered containers. We consider it impractical to label pipes and piping

systems containing hazardous chemicals. In numerous cases, these systems are used for different chemicals at different times, depending upon the needs of the operation. Our training standards require you to train miners about the hazardous chemicals to which they may be exposed in their work area. These are the same chemicals that would be transported in pipes and piping systems. In addition, the training requirements in this interim final rule specifically cover the hazards of chemicals contained in pipes or piping systems in the miners' work areas.

Designated representative. The interim final rule, like the proposal, defines *designated representative* as any individual or organization to whom a miner gives written authority to exercise that miner's right of access to records. A miner's representative, to contrast the two terms, is any individual or organization representing two or more miners.

Many commenters wanted to limit the miner's choice of a designated representative to the duly-selected collective bargaining representative and, if none, a member of a safety and health committee who has been chosen by the miners or an individual miner who has been selected as the walkaround representative by the miners at the same mine. We feel that, by adopting these suggestions, we would restrict a miner's options and that each miner should be allowed to select his or her own designated representative.

The definition of designated representative in the interim final rule does not limit miners to their collective bargaining or miners' representatives. We anticipate that in most instances, the designated representative will be one of those, but it could also be a miner's personal physician, attorney, or other person or organization of the miner's choosing. The interim final rule revises the proposed definition to allow the miner to choose anyone as the designated representative, including a representative of miners under 30 CFR part 40.

Employee; employer. The proposal defined *employee* as any individual working in a mine who may be exposed to a hazardous chemical. Individuals such as office workers who encounter hazardous chemicals in non-routine instances were not covered. We use the term *miner* rather than *employee* in the interim final rule. HazCom, therefore, does not include a definition for *employee*.

The proposal defined *employer* as a person engaged in a business where chemicals are either used, distributed, or are produced for use or distribution,

including a contractor or subcontractor. We use the term *operator* rather than *employer* in the interim final rule. HazCom, therefore, does not include a definition for *employer*.

Exposed. The proposed rule defined *exposed* as being subjected, or potentially subjected, to a hazardous chemical in the course of employment through any route of entry, such as inhalation, ingestion, or skin absorption, during normal operating conditions or in a foreseeable emergency.

A number of commenters wanted the phrase "or potentially subjected" deleted from the definition of *exposed* because it is vague and open to interpretation. Other commenters wanted to modify the definition to read "reasonably foreseeable emergency," and several commenters wanted to delete the entire phrase. Another commenter wanted the term *exposed* to be defined as being subjected, or potentially subjected, to exposure equal to or above the MSHA limit for a hazardous chemical.

Excluding potential exposure to a hazardous chemical, when the chemical does not have an MSHA limit or when the exposure may be below the limit, would circumvent the intent of HazCom. In addition, other MSHA standards address and regulate the miner's exposure to hazardous chemicals. The interim final rule does not incorporate these suggested changes, nor does it retain the phrase "during normal operating conditions or in a foreseeable emergency" in the definition of *exposed*. As with the changes in the definition of article, this phrase addressed a condition of use and confused the normal understanding of the term "exposed." The phrase "potentially subjected" covers those situations where the threat of exposure to hazardous chemicals exists. We use the phrase "during normal operating conditions or in a foreseeable emergency" with the term *exposed* in § 47.2 to describe when HazCom applies.

Foreseeable emergency. The proposed rule defined *foreseeable emergency* as any potential occurrence for which you would normally plan, such as equipment failure, rupture or spill of containers, or failure of control equipment, that could result in an uncontrolled release of a hazardous chemical into the work area. Many commenters stated that the phrase "for which operators would normally plan" is vague and open to interpretation and abuse and should be removed from the definition. Several commenters wanted to substitute "reasonably plan" for "normally plan."

The interim final rule retains the definition of *foreseeable emergency* as proposed. We consider an emergency to be foreseeable if we can reasonably expect you to know that it could occur due to the nature of the mining operation. You are already required to prepare for emergencies through a number of our standards (e.g., fire, ventilation, mine rescue, and training, among others). We believe the term *emergency* is well understood in the mining industry. We expect you to make preparations to address the foreseeable emergencies that can be related to chemicals, should they occur.

Hazard warning. The proposed rule defined *hazard warning* as any word, picture, or symbol appearing on a label or other appropriate form of warning that conveys the specific physical and health hazards of the chemical in the container, including target organ effects. (See the definitions for *physical hazard* and *health hazard* for examples of the hazards that must be communicated.)

One commenter suggested that appropriate protective measures should be required as part of hazard warnings. Although giving information about protective measures is a vital part of HazCom, we address this information in the provisions for MSDSs and training. The purpose of the hazard warning in labeling is to convey critical information immediately. We believe that the most critical information for labeling is the name of the chemical and its hazards.

The interim final rule defines *hazard warning* as any words, pictures, symbols, or other forms of warning that convey the specific hazards of the chemical. We removed the text specifically referencing target organ effects or containers from the definition for *hazard warning* in the interim final rule because it was redundant. Labeling requirements in subpart D of HazCom address containers, and the definitions of *health hazard* and *physical hazard* address the effects of hazardous chemicals, including target organs.

Hazardous chemical. In the proposed rule, we defined *hazardous chemical* as any chemical that is a physical hazard or a health hazard. We also defined physical hazard and health hazard.

One commenter suggested that the definition of *hazardous chemical* convey the concept that a chemical be considered hazardous based on whether it exists in a quantity or is used in a manner that could present a reasonable risk of overexposure to a miner. Several other commenters suggested that the definition exempt coal and related raw materials and consumer products. Another commenter wanted hazardous material to be substituted for hazardous

chemical, stating that it would be more readily understood. As an example, this commenter stated that asbestos and gasoline are highly hazardous, yet they are not commonly referred to as chemicals.

If we based the application of HazCom on the quantity of a chemical present, it would allow you to ignore chemicals with known hazards if they are in small quantities. Some hazardous chemicals are not evenly dispersed in a mixture of dusts, liquids, or gases, and pockets of high concentration can pose a hazard even if the quantity is low. For example, if a hazardous chemical settles in layers near the ground, a measurement of it near the breathing zone of the miner may lead to a faulty conclusion that the chemical does not present a reasonable risk of overexposure. We believe that it is far more protective, and necessary to prevent illness, to train miners about the presence of the chemical, signs and symptoms of exposure, safe work practices, precautionary measures, and the need to keep engineering controls in proper working order, rather than argue about what level of risk is reasonable or significant and then wait until there is a reasonable or significant risk to inform the miners about it.

Exemptions of coal, raw materials, and consumer products from the definition of hazardous chemical would, in effect, exempt these substances from HazCom. In conjunction with the definition of chemical in this interim final rule, the definition of hazardous chemical adequately addresses our intent that common hazardous substances, such as gasoline, are to be considered hazardous chemicals.

To be consistent with changes in the definitions of *health hazard* and *physical hazard*, we changed the definition of *hazardous chemical* in the interim final rule to mean any chemical that can present a physical hazard or a health hazard. We included the criteria for determining whether a chemical is hazardous in § 47.11, Identifying hazardous chemicals.

Hazardous substance. The proposal did not define the term *hazardous substance*, but used it in the provisions for exemptions. A number of commenters felt that hazardous substance should be defined because it is used in the rule. We use the term in this standard specifically to exempt hazardous substances regulated by EPA as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 U.S.C. 9601 *et seq.*) and the Federal Hazardous Substance Act (15 U.S.C. 1261 *et seq.*). We do not

define *hazardous substance* in the interim final rule; however, its meaning and use is the same as in the proposal and consistent with OSHA's HCS.

Hazardous waste. Hazardous waste was defined in the proposed rule as any chemical regulated by the Environmental Protection Agency (EPA) as a hazardous waste, as such term is defined by the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6901 *et seq.*). Many commenters wanted hazardous waste re-defined to include only those chemical wastes which, because of their quantity, concentration, or physical, chemical, or infectious characteristics, may result in death or serious illness or pose a substantial hazard to human health or the environment when improperly treated, stored, transported, disposed of, or otherwise managed. One commenter requested that HazCom include an operational definition for hazardous waste.

We believe that an operational definition of hazardous waste specifically for mining operations would cause confusion for you in complying with other Federal and State standards. Other wastes from the mining operation or brought to the mine that are not regulated by EPA also can contain hazardous chemicals. The primary difference between the hazardous waste regulated by EPA from those unregulated by EPA is the amount of information that you can expect from the supplier. Although HazCom exempts EPA-regulated hazardous wastes from labels and MSDSs, you must instruct miners who can be exposed about their hazards. We are especially concerned that you obtain enough information to instruct miners about those wastes that are brought to mine property, the content and hazards of which may be unknown to you.

The interim final rule uses the same definition of hazardous waste as proposed. We intend that our use of the term hazardous waste be consistent with both OSHA's and EPA's use of this term.

Health hazard. The term *health hazard* is used in the proposal and the interim final rule to describe those chemicals that can present a risk of disease or other harmful health effects to an exposed miner. The proposed rule defined health hazard as "[a] chemical for which acute or chronic health effects may occur in exposed employees." The proposal then listed the types of illness or injury that we consider to be health hazards.

A few commenters wanted health hazard defined (as in OSHA's HCS) as a chemical for which there is

statistically significant evidence of significant risk based on at least one valid study. One commenter stated that much of the information in the definition was overwhelming and that the inclusion of Appendix A and Appendix B as part of the definition was inappropriate and confusing. Some commenters suggested that the final rule reference 30 CFR parts 56, 57, 70, 71, and 75 instead of Appendices A and B.

We agree with the commenters and drafted the definition to be clearer. We also deleted the appendices to eliminate that potential source of confusion. We added for the sake of clarity that there must be statistically significant evidence that the chemical can do harm and described the types of illness and injury in plain language. We believe that the interim final rule clarifies the intent, meaning, and use of the proposed definition.

Health professional. We use the term *health professional* in the subpart on Trade Secrets in addressing two situations: an emergency situation when the trade secret information may be needed to save a life, and a non-emergency situation when the information may be needed, but not immediately. The term in the proposed rule referred to a treating physician or nurse. We received comments that others, such as emergency medical technicians, may need access to this information in an emergency. One commenter essentially asked that "occupational" not be used restrictively to limit *health professional*. Another commenter asked that *health professionals* be licensed individuals. This would eliminate industrial hygienists, for example, who may be board certified, as well as some otherwise qualified nurses and technicians.

Some commenters asked that we include "safety professionals" among those who must be given trade secret information that may otherwise be withheld. They stated that it is necessary to add safety professionals to the definition of *health professional* because many mines do not have industrial hygienists; their safety professionals monitor, review, and make corrective recommendations.

In response to comments, we have defined a new term, *health professional*, in the interim final rule to include a physician, nurse, physician's assistant, emergency medical technician, industrial hygienist, toxicologist, epidemiologist, or other person qualified to provide the medical or occupational health services based on education, training, and experience. This definition is deliberately flexible to

allow you to make decisions that focus on the needs of the miner. The interim final rule does not require that the *health professional* be licensed. We believe that the definition in the interim final rule is restrictive enough to protect trade secret information about the chemical composition of a material, but broad enough to give access to those who need it.

We expect that trade secret chemical information may be needed when a miner is being treated as a result of a chemically-related injury or illness. Only persons involved in treatment, researchers looking into the causes of injuries or illnesses, or the exposed miners or their designated representatives must have access to this critical information when it is necessary. Information appropriate to a safety professional would be available on the MSDS. In any event, a safety professional charged by you with a responsibility for chemical hazard communication should already have access to the chemical information.

Identity; specific chemical identity. The interim final rule retains the proposed definition of identity as a chemical's common or chemical name, which must permit cross-references among the required list of hazardous chemicals, the label, and the MSDS. The proposed rule defined *specific chemical identity* as the chemical name, CAS number, or any other designation that precisely identifies the chemical. One commenter suggested that the definition of *specific chemical identity* duplicate that of *identity*.

For purposes of HazCom, we determined that *specific chemical identity* was an unnecessary term because the interim final rule, as did the proposal, defines the terms *identity*, *chemical name*, and *common name* which duplicate its definition. The proposed rule had defined *chemical name* to include CAS numbers, *common name* to include other designations, and *identity* to include the chemical name and common name. We do not use or define the term *specific chemical identity* in the interim final rule.

Immediate use. The term *immediate use* in the proposal clarified under what conditions it would be appropriate to use an unlabeled, temporary, portable container. In the proposal, *immediate use* meant that the miner who transferred the substance from a labeled container into a temporary, portable, unlabeled container must use it during the same work shift. We removed this term from the Definitions subpart in the interim final rule and, instead, incorporated the proposed definition in the standard.

Label. The proposal defined *label* as "any written, printed, or graphic material, displayed on or affixed to containers of hazardous chemicals." We define *label* in the interim final rule in essentially the same way. For the final HazCom rule, however, we added the phrase "to identify its contents and convey other relevant information" and deleted the phrase "of hazardous chemicals" in an effort to make this definition consistent with the common understanding of this term. A label on a container usually identifies its contents, whether or not it contains a hazardous chemical.

Material safety data sheet (MSDS). We defined *material safety data sheet (MSDS)* in the proposal as written or printed material that an operator prepares in accordance with HazCom's requirements, or which the manufacturer or supplier prepares under OSHA's HCS for hazardous chemicals brought to the mine. One commenter urged us to include an operational definition for MSDS rather than reference HazCom's requirements or OSHA's HCS. An operational definition, without reference to the standards, misses the fact that we intend the MSDS to be an information fact sheet that conforms to the cited regulatory requirements. Although HazCom does not require a specific format, we do encourage you to use an established format for consistency within the mining industry and to be in accord with other industries, your customers. In the interim final rule, we revised the definition of MSDS without changing its requirements by expanding the reference to OSHA standards and by referencing Table 47.42, which contains the requirements for the contents of an MSDS.

Mixture. The interim final rule retains the proposed definition of *mixture* as "any combination of two or more chemicals which is not the result of a chemical reaction." We intend that the definition of mixture be applied broadly to include both solutions of chemicals and combinations of chemical solids. A characteristic of any mixture is that its individual components could be separated by mechanical or physical methods.

One commenter felt that this definition would include those chemical byproducts or impurities in trace amounts that are contained in otherwise pure chemicals and that we should clarify the definition. We intend that you treat pure compounds or elements as individual chemicals, rather than as mixtures, even when they contain small amounts of other chemicals as impurities. This treatment

is similar to our treatment of trace releases from articles and is consistent with OSHA's HCS.

Operator; miner. As discussed above, HazCom uses the mining terms *operator* and *miner* as defined in the Mine Act instead of *employer* and *employee*. The Mine Act defines *operator* as "any owner, lessee, or other person who operates, controls, or supervises a coal or other mine or any independent contractor performing services or construction at such mine," and *miner* as "any individual working in a coal or other mine." Because they are defined in the Mine Act, we do not define these mining terms in HazCom.

We removed the definitions for *employer* and *employee* from the interim final rule. Although not included in the definitions, we use these terms in the context of their ordinary meaning.

Ordinary consumer use. In response to comments, we are defining the phrase *ordinary consumer use*. For the purpose of HazCom, *ordinary consumer use* means:

- (1) The product or article is packaged and sold by the manufacturer or retailer for use in or around a residence, a family, or a school; in recreation; or elsewhere for personal use or enjoyment, as opposed to business use.
- (2) The miner's exposure is the same as it would be for an ordinary consumer using the product as the manufacturer intended.

To be considered *ordinary consumer use*, the miner could not be exposed to the product at more than the same concentration, frequency, and duration of time than an ordinary consumer would. For example, using an organic solvent that is an ingredient in a hand soap in a washroom would be considered normal consumer use. Using that same solvent as a detergent in a flotation reagent is not.

Pesticide. The term *pesticide* appears in the interim final rule to clarify that *pesticides* are regulated by another Federal agency and are exempt from HazCom. We do not define this term.

Physical hazard. The term *physical hazard* is used in the proposal and the interim final rule to describe those chemicals with properties that can present a risk of injury to a miner. The proposal listed examples of chemical reactions, such as flammability, that are physical hazards. The interim final rule lists the chemical reactions and then further defines each of them: a combustible liquid, a compressed gas, an explosive, a flammable, an organic peroxide, an oxidizer, a pyrophoric, an unstable (reactive), or a water reactive material. As normally used, *physical hazard* means the actual physical effect

that a chemical can cause, rather than the chemical itself. The proposed definition differed from this common meaning. To eliminate possible confusion or ambiguity, the interim final rule defines physical hazard consistent with its common meaning by listing examples of the types of chemical reactions that can cause physical harm to miners.

(1) *Combustible liquid*. We defined *combustible liquid* in the proposal as a liquid with a flashpoint at or above 100°F (100 degrees Fahrenheit) which is 37.8°C (37.8 degrees centigrade). The proposal listed the following three classes of *combustible liquids*:

(a) Class II liquids—those having flashpoints at or above 100°F (37.8°C) and below 140°F (60°C).

(b) Class III A liquids—those having flashpoints at or above 140°F (60°C) and below 200°F (93.4°C).

(c) Class III B liquids—those having flashpoints at or above 200°F (93.4°C).

OSHA's HCS had defined a *combustible liquid* as a liquid having a flashpoint at or above 100°F but below 200°F, except any mixture having components with flashpoints of 200°F or higher, the total volume of which make up 99% or more of the total volume of the mixture. Commenters stated that it would be preferable to have our definition of *combustible liquid* coincide with OSHA's definition, because many facilities are covered by both rules.

We believe that the proposed definition of *combustible liquid* is compatible with OSHA's definition. We had proposed to list the various classes of combustible liquids to match the definition in other MSHA standards. In response to comments, however, the interim final rule does not list these classes of combustible liquids. The interim final rule defines *combustible liquid* as a liquid having a flashpoint at or above 100°F (37.8°C) and below 200°F (93.3°C) or a liquid mixture having components with flashpoints of 200°F (93.3°C) or higher, the total volume of which make up 99% or more of the mixture. The definition in HazCom is the same as in OSHA's HCS.

(2) *Compressed gas*. We defined *compressed gas* to mean a contained gas or mixture of gases with an absolute pressure exceeding 40 psi (pounds per square inch) [276 kPa (kiloPascals)] at 70°F (21.1°C) or 104 psi (276 kPa) at 130°F (54.4°C) regardless of pressure at 70°F. In addition, we consider a liquid to be a compressed gas when its vapor pressure exceeds 40 psi (276 kPa) at 100°F (37.8°C), as determined by ASTM D-323-72. This definition is consistent

with OSHA's HCS and is unchanged in the interim final rule.

One commenter stated that the definition of *compressed gas* includes compressed air in motor vehicle tires and air compressors. Although compressed air meets the definition in HazCom for a compressed gas, an inflated tire is an article and exempt from HazCom. Also, an inflated tire is part of a motor vehicle and, thus, is not a container under HazCom. Neither do we consider compressed air in a tire or compressor to be a hazardous chemical under HazCom. A shop compressor contains compressed, ambient air and, unlike compressed gas cylinders, it is equipped with a safety valve to release excess pressure. We recognize that serious hazards exist when working with inflated tires and compressed air receivers, but we address these hazards in our safety standards. We do not require an MSDS or a label for compressors or compressed air.

(3) *Explosive*. We defined *explosive* in the proposed rule in the same way as it is defined in OSHA's HCS and added a reference to Department of Transportation requirements. There were a number of comments that objected to the use of an incorporation by reference. In response to comments, we eliminated this reference in the interim final rule and rely on the more familiar definition of *explosive* as a chemical that undergoes a rapid chemical change causing a sudden, almost instantaneous release of pressure, gas, and heat when subjected to sudden shock, pressure, or high temperature. We intend this definition to cover the same substances that were covered in the proposal, and we believe the term will be better understood by the mining industry.

(4) *Flammable*. We defined *flammable* in the proposed rule as a chemical that is an aerosol, a gas, a Class I liquid, or a solid that would meet specific criteria relating to its capability to ignite, to burn, and to sustain a flame. The proposal referenced testing methods in 16 CFR and classifications of *explosives* in 49 CFR, but did not include a specific publication date. A commenter requested that we include the dates of publication for references in the definition of *flammable*. This commenter also stated that unless—

* * * operational definitions are included in the rule, it is difficult to understand, and becomes a deterrent to compliance. The mine supervisor should be able to look at the definition and determine if an item such as a conveyor belt is flammable.

As with the term *explosive*, we recognize that the proposed definition

was highly technical and that a simpler, more generally understood definition would better serve the industry. Accordingly, and in response to comments, the interim final rule defines a *flammable* chemical as one that will readily ignite and, when ignited, will burn persistently at ambient temperature and pressure in the normal concentration of oxygen in the air. We intend that this definition include the same chemicals as would have been included under the proposed definition and under OSHA's HCS. We will include the more technical definition in the Compliance Guide for this rule.

We did not define *flashpoint* in the interim final rule. We believe that qualified persons who already know the meaning of the term will be determining a chemical's flashpoint.

(5) *Organic peroxide*. The proposal defined *organic peroxide* as an *explosive*, shock sensitive compound or an oxide that contains a high proportion of oxygen-superoxide. We received no specific comments on this definition. It is unchanged in the interim final rule except for the addition of the word "organic" to the description of the chemical. We intend the definition in HazCom to be essentially the same as in OSHA's HCS. OSHA defined organic peroxide as—

* * * an organic compound that contains the bivalent -O-O- structure and which may be considered to be a structural derivative of hydrogen peroxide where one or both of the hydrogen atoms has been replaced by an organic radical.

(6) *Oxidizer*. The proposal defined *oxidizer* as a chemical other than a blasting agent or explosive as classified in 49 CFR 173.53, 173.88, 173.100 or 173.114(a) that initiates or promotes combustion in other materials, thereby causing fire by itself or through the release of oxygen or other gases. This definition is consistent with the definition for *oxidizer* in OSHA's HCS. A commenter objected to our referencing 49 CFR in our definition of this term. In response to comments, we eliminated the reference from the interim final rule. We will include these further explanatory details in the Compliance Guide for HazCom.

(7) *Pyrophoric*. The interim final rule retains the proposed definition of *pyrophoric* with minor editorial changes. This definition is consistent with that in OSHA's HCS.

(8) *Unstable (reactive)*. We defined *unstable (reactive)* in the proposal and interim final rule as a chemical which in the pure state, or as produced or transported, will vigorously polymerize, decompose, condense, or become self-

reactive under conditions of shock, pressure, or temperature. This definition is consistent with OSHA's HCS.

(9) We defined *water-reactive* in the proposal and interim final rule as a chemical that reacts with water to release a gas that is either flammable or a health hazard. This definition is consistent with that in OSHA's HCS.

Produce. We defined *produce* in the proposal as to "manufacture, process, formulate, or repackage." This definition, together with the definition for *use*, is intentionally broad to include any situation where a hazardous chemical is present in such a way that a miner may be exposed.

We received a few comments supporting the proposed definition and no comments specifically opposing it. Other comments, however, are applicable to this issue. For example, one commenter suggested that we exempt certain mine emissions, such as diesel exhaust and welding fumes, from the MSDS requirements of HazCom. This commenter stated that the composition of these produced chemicals can vary so much that not even "generic MSDSs, created by MSHA as assistance to mine operators, will be very useful." Another commenter on the definition of *chemical* also assumed that it includes the byproducts of mining activities, such as diesel exhausts. This commenter stated that "constituent ingredients in diesel exhaust—nitrogen, carbon, and sulfur oxides, organic vapor, diesel particular matter—would have to be subject of this standard also."

The interim final rule defines *produce* as to "manufacture, process, formulate, generate, or repackage." By adding the term "generate" to the proposed definition, we clarify our intent that HazCom apply to byproducts of mining activities. For example, HazCom would apply to diesel emissions, the inadvertent generation of cyanide in a storage tank, or welding fumes from construction or repair of machinery. As explained under the definition for *chemical*, the byproducts of mining activities may be covered in the MSDS for the initial chemical or separately for the hazardous chemical byproduct itself. Also, you may develop an MSDS for a process if that is more relevant to the chemical hazard. For the most part, solid waste sites and tailings ponds are covered by other MSHA, Federal, or State standards. You already must train miners about these hazards and appropriate safe work practices and protective measures.

Raw material. In the proposal, we defined *raw material* as a mineral, or combination of minerals, that is

extracted from natural deposits by mining or is upgraded through milling. The proposed definition added that the term applied to the ore and valuable minerals extracted, as well as to the worthless material, gangue, or overburden removed during the mining or milling process. One commenter agreed that this definition correctly includes the tailings from crushed stone, and sand and gravel operations. Another commenter wanted to substitute the word "material" for "mineral" in the definition of *raw material*, stating that—

The term "mineral" has different uses in different areas of mining and geology that imply different definitions. The term "material" should be substituted in this definition as a more generic and less restrictive term for "mineral."

The interim final rule does not incorporate this suggestion, but retains the proposed definition of *raw material* with minor editorial changes. Our intent is that *raw material* be limited to minerals.

Trade secret. Like the proposal, the interim final rule defines *trade secret* as any confidential formula, pattern, process, device, information, or compilation of information that is used by the operator to give him or her an opportunity to obtain an advantage over competitors who do not know or use it. This definition is taken from the Restatement of Torts § 757, comment b (1939). HazCom allows you to withhold the *identity* of the chemical declared a trade secret under certain conditions. It requires that you provide the miners with all other pertinent HazCom information, though not process or percentage of mixture information.

One commenter was concerned that *trade secret*, as defined in the proposal, would allow you to arbitrarily restrict access. This commenter also recommended that the final rule include Appendix D from OSHA's HCS, which would reprint the entire Restatement of Torts comment, to guide you in applying the trade secret definition. Another commenter saw extremely limited utility and could find no reason to include this appendix.

We do not believe that this appendix is necessary. As stated in the preamble to the proposal, the Restatement of Torts indicates that there are at least six well-accepted factors in establishing a trade secret claim. Those six factors are—

- (1) The extent to which the information is known outside of the business;
- (2) The extent to which information is known by employees and others involved in the business;

(3) The extent of measures taken by the business to guard the secrecy of the information;

(4) The value of the information to the business and its competitors;

(5) The amount of effort and money expended in developing the information; and

(6) The ease or difficulty with which the information could be properly acquired or duplicated by others.

We believe these principles provide sufficient guidance in determining the legitimacy of a trade secret claim without publishing an appendix. We considered including several of the proposed appendices in the interim final rule. We determined, however, that the overall effect of these additions was to obscure rather than clarify the requirements. Instead, we intend to publish a Compliance Guide, a Toolbox, and other information apart from HazCom to assist the industry in complying.

Use. We defined *use* in the proposal as "to package, handle, react, or transfer." OSHA has defined *use* as "to package, handle, react, emit, extract, generate as a byproduct, or transfer." We did not include the terms "extract, emit, or generate as a byproduct" because we believe they are already covered under the definition for *produce*. The interim final rule is the same as the proposal in this respect. We intend this definition to be broad enough to include any situation where a hazardous chemical is present in such a way that a miner may be exposed.

Work area. We defined work area in the proposal as a room or defined space in a workplace (now a mine) where hazardous chemicals are produced or used and where employees (now miners) are present. The interim final rule changes the definition of *work area* to mean any place in or about a mine where a miner works or a chemical is used or produced to make HazCom's definition more consistent with common understanding and retain its application to the presence of chemicals. The definition is consistent with the intent of the proposal, but clarifies the conditions that must be present for a work area. We were going to use the more familiar term "working place," but it has different meanings for different segments of the mining industry.

Workplace. The proposal defined *workplace* as a mine, establishment, job site, or project at one geographical location containing one or more work areas. HazCom uses the term *mine* instead of *workplace*. Because the interim final rule does not include the

term *workplace*, we removed its definition.

K. Appendices

The proposal contained three appendices. Appendix A, Health Hazard Definition, a mandatory section providing additional details for the proposal's definitions. Appendix B, Information Sources, was a comprehensive advisory list of sources to evaluate the physical hazards of chemicals and their specific health effects. Appendix C, Guidelines for Operator Compliance, provided additional advisory guidance for complying with the HazCom standard. The interim final rule does not include these appendices. We also included a table of Hazard Communication Chemicals, identified in the proposal as Table 1, which was intended to help determine if a chemical was hazardous by listing chemicals from MSHA's health standards, the ACGIH, the NTP, and IARC. Table 1 has been deleted from the interim final rule. Much of this information will be included in a HazCom Toolbox to be published separately from the interim final rule.

IV. Legal Authority and Feasibility

The primary purpose of the Federal Mine Safety and Health Act of 1977 (Mine Act) is to ensure safe and healthful working conditions for the Nation's miners. One means established by Congress to achieve this goal is the authority vested in the Secretary of Labor (Secretary) to set mandatory safety and health standards. The HazCom interim final rule is being promulgated as a mandatory safety and health training and information standard under § 101 and § 115 of the Mine Act.

A. Statutory Requirements

Section 101(a)(6)(A) of the Mine Act applies to all mandatory standards involving toxic materials or harmful physical agents. It requires us to set standards to ensure that a miner will not suffer a material impairment of health or functional capacity as a result of exposure to the hazard, even if the miner is exposed for his or her working life. We must also consider the latest scientific data in the field, feasibility of the standard, and experience gained under this and other health and safety laws.

Material impairment. Section 101(a)(6)(A) of the Mine Act and § 6(b)(5) of the Occupational Safety and Health Act (OSH Act) contain similar statutory language. Both statutory sections contain provisions indicating that mandatory standards must be

designed to prevent "material impairment of health or functional capacity * * *"

The Supreme Court has indicated, in discussing significant risk of material impairment of health in the context of litigation under § 6(b)(5) of the OSH Act, that the significant risk determination constitutes a finding that, absent the change in practices mandated by the standard, the workplaces in question would be "unsafe" in the sense that workers would be threatened with a significant risk of harm. [*Industrial Union Dept. v. American Petroleum Institute*, 448 U.S. 607, 642 (1980) (Benzene)]. This finding, however, does not require mathematical precision or anything approaching scientific certainty if the "best available evidence" does not warrant that degree of proof. [*Id.* at 655–656]. Rather, the agency may base its findings largely on policy considerations and has considerable leeway with the kinds of assumptions it applies in interpreting the supporting data. [*Id.* at 656].

Feasibility. The Mine Act and the OSH Act also have similar statutory requirements regarding "feasibility." While § 6(b)(5) of the OSH Act requires that standards assure, "to the extent feasible, * * * that no employee will suffer material impairment of health or functional capacity," § 101(a)(6)(A) of the Mine Act requires us to consider "the feasibility of the standard * * *." In addition, the legislative history of the Mine Act specifically cites feasibility cases decided under the OSH Act and strongly suggests that "feasibility" principles applicable to OSHA standards are also applicable to MSHA standards. [S. Rep. No. 95–181, 95th Cong., 1st Sess. 21 (1977)]. The legislative history of the Mine Act also states that:

In adopting the language of [this section], the Committee wishes to emphasize that it rejects the view that cost benefit ratios alone may be the basis for depriving miners of the health protection which the law was intended to insure. *Id.*

Though the Mine Act and its legislative history are not specific in defining feasibility, the Supreme Court clarified its meaning in *American Textile Manufacturers' Institute v. Donovan* [452 U.S. 490, 508–509 (1981) (Cotton Dust)]. In that case, the Court defines the word "feasible" as "capable of being done, executed, or affected." The Court stated, however, that a standard would not be considered economically feasible if it threatened an entire industry's competitive structure. In promulgating standards, agencies do not have to rely on hard and precise

predictions regarding feasibility. We need only base our projections on reasonable inferences drawn from existing facts. Thus, to establish the economic and technological feasibility of a new rule, we must assess the likely range of costs that it will impose on mines, and show that a reasonable probability exists that a typical mine will be able to meet the standard.

Also, the 11th Circuit, in *National Mining Association v. Secretary of Labor* [153 F.3d 1264 (1998) (single sample)], has stated that we are required to comply not only with the procedural provisions of § 101 of the Mine Act when developing, promulgating, and modifying mandatory safety and health standards, but with all provisions of that section, including showings of feasibility, best available evidence, latest available scientific data, and experience. Accordingly, when developing, promulgating, and modifying mandatory standards, we must enact the most protective standard possible to eliminate a significant risk of material health impairment, subject to the constraints of technological and economic feasibility.

Also, § 101(a)(7) requires that any health or safety standard promulgated under the authority of § 101(a) of the Mine Act must—

* * * prescribe the use of labels or other appropriate forms of warning as are necessary to insure that miners are apprised [sic] of all hazards to which they are exposed, relevant symptoms and appropriate emergency treatment, and proper conditions and precautions of safe use or exposure.

These requirements provide basic protections for workers in the absence of specific permissible exposure limits.

B. Finding of Significant Risk

We have determined that hazardous chemicals are found in all mining environments and that many operators and miners are not sufficiently aware of the presence of these hazardous chemicals nor the nature of the hazards. Also, we have determined that this lack of knowledge increases a miner's risk of suffering a chemically-related occupational illness or injury, because precautions and appropriate protective measures are used only when the presence of a chemical hazard is known. Communicating this information to miners is intended to reduce the incidence of chemically-related occupational illnesses and injuries in the mining industry by changing the workplace behavior of miners and mine operators to reduce the risk of harmful exposures.

The provisions of this interim final rule—hazard evaluations, written

HazCom programs, labels and other forms of warning, MSDSs, and miner training—are directed not only at the identification of hazardous chemicals at the mine, but more significantly at the mitigation of their hazards. The probability of harm will decrease largely as a result of operators' and miners' increased awareness of the hazardous nature of the chemicals and the protective measures to avoid harmful exposures. Increased care and use of protective measures when working around hazardous chemicals will reduce the incidence of chemically-related illnesses and injuries at mines.

The information provided under this interim final rule also will enable health and safety professionals to provide better services to exposed miners. The ready availability of health and safety information, such as signs and symptoms of exposure, will aid medical surveillance and the early detection and treatment of problems. It also will help you make better decisions regarding exposure monitoring, process or exposure controls, and appropriate personal protective equipment. Because our rulemaking record clearly indicates that inadequate communication about serious chemical hazards endangers miners, and that the requirements of this standard are necessary and appropriate for the elimination or mitigation of these hazards, we are able to make the threshold "significant risk" determination.

Several commenters indirectly suggested that we needed to find significant risk for each chemical covered and for each exposure situation. We address these comments in more detail in our discussion of § 47.2, Operators and chemicals covered. It is clear from relevant court decisions involving OSHA's HCS, however, that a specific finding of significant risk is not required for a standard such as this, where the significant risk being regulated is that of inadequate knowledge.

In *Associated Builders & Contractors v. Brock* [862 F.2d 63 (1988)], industry confronted the 3rd Circuit Court with a similar argument involving the OSHA HCS and OSHA's general finding of significant risk. Industry argued that the standard was invalid because OSHA had promulgated it without a significant risk determination. Industry also claimed that OSHA needed to find significant risk for each chemical covered and for each industry covered. The court disagreed with industry and ruled that the general significant risk finding for the original 1983 rule was appropriate for the entire manufacturing sector, and that it was also applicable to

each of the 20 major Standard Industrial Classification (SIC) Code manufacturing subdivisions [Id. at 67].

The court also stated that OSHA was not required to determine significant risk for each chemical covered under the rule because the rule was not a substance based rule, but an information disclosure standard. The court concluded that—

* * * there is no more obvious need for industry specific significant risk determinations for the (non-manufacturing) industries than for subdivisions of the manufacturing sector. [Id. at 67–68]

Specifically, the court held that:

* * * for this performance-oriented information disclosure standard covering thousands of chemical substances used in numerous industries, the significant risk requirement must of necessity be satisfied by a general finding concerning all potentially covered industries. A requirement that the Secretary assess risk to workers and the need for disclosure with respect to each substance in each industry would effectively cripple OSHA's performance of the duty imposed on it by 29 U.S.C. 655(b)(5); a duty to protect all employees, to the maximum extent feasible. [Id. at 68]

OSHA was not required to assess individually the significant risk that would be alleviated by the HCS's application to each of the seventy major business classifications, much less for each of the hazardous substances used in those industries. In addition, OSHA's application of the 1983 general finding of significant risk to the construction and grain processing and storage industries was upheld by the 5th Circuit in *National Grain and Feed Association v. OSHA* [866 F.2d 717 (1989)] (petition for review of OSHA's modified HCS as it applied to the construction and grain processing and storage industries)].

Because our HazCom rule was modeled on OSHA's HCS, and the Mine Act and OSH Act are similar with respect to the regulatory requirements for the promulgation of mandatory safety and health standards, we believe that we have satisfied our statutory threshold of significant risk with our general finding of risk presented in this section. We conclude that neither the record evidence nor policy considerations support the argument that we should apply HazCom only where chemical exposures pose known significant risks. We find that the risk of harm to miners will increase if operators allow a condition or situation to develop that poses a significant risk of harm to miners before providing the potentially exposed miners with chemical hazard information.

In addition, in light of § 101(a)(7) of the Mine Act which requires us to

"insure that miners are apprised [sic] of all hazards to which they are exposed," you must inform miners about all hazards before the miner could be exposed to them. Linking the application of HazCom to a risk level is contrary to the standard's purpose—to change operator and miner behavior before an illness or injury occurs by preventing exposure.

Likewise, requiring information disclosure only in situations where exposure might exceed a PEL or ACGIH TLV is not consistent with the purpose of the rule. HazCom is intended to address all hazardous chemicals at mines. The range of hazards and concentrations are too diverse to address through a single measurement. Also, some chemicals are highly hazardous even in small amounts or low concentrations. A *de minimis* exemption, therefore, would not provide sufficient protection to miners and would not address the true issue of concern—informing miners of potential hazards. Exposure limits address a limited number of the hazardous chemicals encountered at the mine. Also, PELs are used to control inhalation exposures. Because the definition of exposure in HazCom includes absorption through the stomach or skin, in addition to the lungs, the exposure limits might be unrelated to the total exposure experienced by a miner. In certain circumstances, the most significant route of exposure may be through the stomach or skin.

These HazCom requirements are both necessary and appropriate to protect miners, even when we have not determined that the level of risk from a particular chemical exposure warrants a substance-specific standard that would require more complex and costly types of controls. We conclude that operators must obtain information for all hazardous chemicals to which miners can be exposed and provide it to miners, regardless of any judgments about possible levels of risk.

C. Finding of Feasibility

Only one commenter claimed that a provision was infeasible, stating that those working in isolated workplaces could not have immediate access to MSDSs. The interim final rule allows MSDSs to be kept in a central location, as well as electronic access.

The record contains substantial evidence of feasibility. We conclude that these administrative requirements can be merged economically into present practices. The performance-oriented, informational provisions of HazCom are capable of being done and

will not threaten the viability or long-term profitability of the mining industry.

This standard does not relate to activities on the frontiers of scientific knowledge. The informational requirements contained in this interim final rule are not the sorts of obligations that approach the limits of feasibility. There are no technological barriers preventing implementation of the HazCom requirements because most of these requirements are accepted, common business practices that are administrative in nature.

As estimated in our Regulatory Economic Analysis (REA) supporting this HazCom interim final rule, the mining industry will incur costs of about \$5.7 million annually to comply with the interim final rule. These compliance costs represent much less than 1% (about 0.01%) of mining industry annual revenues of \$59.7 billion and provide convincing evidence that the interim final rule is economically feasible.

1. Compliance Burden

We intend a number of factors to reduce the compliance burden associated with MSHA's HazCom interim final rule. The rule is closely modeled on OSHA's HCS and informational materials, training aids, and model training programs, developed and made widely available by both OSHA and commercial sources, will help mine operators comply. We are developing a HazCom Toolbox, designed particularly for small mine operators, that will provide MSDSs, labels, and formal programs for ease-of-use and ready adaptability. We will focus state grants on including HazCom training and informational materials, and will have trainers and videos available. Although we do not intend to conduct HazCom training for the mining industry, we will provide information and assistance to trainers through our Mine Health and Safety Academy, Educational Field Services, and the MSHA district offices.

Finally, we have simplified the language of the rule to make it easier to understand and, thus, easier to comply with.

2. Flexibility of Program

We wrote or revised the major provisions of the HazCom rule to provide the most flexibility possible that also ensured an enforceable interim final rule.

List of chemicals. Mine operators can compile the list for the mine or individual work areas. We did not specify a format or chemical

identification system, which will allow operators great latitude in how they identify their chemicals.

Hazard determination. We did not specify the format and criteria for establishing hazard determination procedures. Operators have considerable discretion in how they conduct the determination, so long as others can understand how they made their determinations.

Exchanging information. We used performance language rather than specification language in requiring operators to establish a way to exchange information with other operators on-site.

Labels. The label requirements in the interim final rule are performance-oriented, flexible, and consistent with the proposal and OSHA's HCS. Therefore, labels that comply with OSHA's HCS will comply with HazCom. The interim final rule does not require operators to label for downstream users; re-label containers of hazardous materials that are labeled in accordance with other Federal standards; update labels that they did not prepare; nor label chemicals in a particular format. They may substitute various types of standard operating procedures, process sheets, batch tickets, blend tickets, and similar written materials for container labels on stationary process equipment. The interim final rule is deliberately flexible to allow for the adoption of an international system for classifying and displaying hazard information, when it becomes available. We are not requiring that operators label raw materials at a mine.

Training. Relevant training that meets OSHA's HCS will comply with HazCom. Operators can combine HazCom training with pre-existing requirements under parts 46 and 48. We delayed the HazCom rule's effective date until 1 year from its date of publication in the **Federal Register** to allow operators the flexibility to include HazCom training in their annual refresher training under parts 46 and 48. Operators can use instructors already on staff qualified under parts 46 and 48.

MSDS. We did not require that MSDSs be in a particular format, only requiring certain basic information. Operators must only provide an MSDS for a mine product upon request. We are also allowing the MSDS to be in an electronic medium.

Hazardous waste. Operators are not required to have an MSDS for hazardous waste although they must make any relevant information available to the miner.

D. Petitions for Modification

Our classification of HazCom as both a safety and a health standard impacts whether operators or representative of miners can petition us for a modification. Under § 101(c) of the Mine Act, operators or representatives of miners may petition us to modify the application of a mandatory safety standard, but not a health standard. Because the HazCom standard is being promulgated as both a health and safety standard, operators may not petition us for a modification. To allow as much compliance flexibility as possible, the final HazCom requirements are performance oriented. We cannot envision any equally protective alternatives that HazCom does not already allow.

V. The Regulatory Flexibility Act, the Small Business Regulatory Enforcement Fairness Act, and Executive Order 12866

The Regulatory Flexibility Act (RFA) requires a regulatory agency to evaluate each proposed and final rule and to consider alternatives so as to minimize the rule's impact on small entities (businesses and local governments). Under the RFA, we must use the Small Business Administration's (SBA) definition of a small entity in determining a rule's economic impact unless, after consultation with SBA, we establish a different definition.

In the preamble to our HazCom proposal, we certified that this rule would not have a significant economic impact on a substantial number of small mining operations. The preamble also included a full discussion of the regulatory alternatives that we were considering and invited the public to comment.

In 1996, Congress enacted the Small Business Regulatory Enforcement Fairness Act (SBREFA) amending the RFA. SBREFA requires a regulatory agency to include in the preamble to a rule the factual basis for that agency's certification that the rule has no significant impact on a substantial number of small entities. The agency then must publish the factual basis in the **Federal Register**, followed by an opportunity for public comment. Although SBREFA did not exist when we published the HazCom proposal, we published a notice reopening the record in March 1999, to give you an opportunity to comment on the factual basis for our previous certification that the HazCom proposal would pose "no significant impact."

This rule has been drafted and reviewed in accordance with Executive

Order (E.O.) 12866, § 1(b), Principles of Regulation. E.O. 12866 requires a regulatory agency to assess both the costs and benefits of proposed and final rules and to complete a Regulatory Economic Analysis (REA) for any rule having major economic consequences for the national economy, an individual industry, a geographic region, or a level of government. We prepared a REA and Regulatory Flexibility Certification Statement to fulfill the requirements of the RFA and E.O. 12866. Based on our REA, we determined that this interim final rule is not an economically significant regulatory action pursuant to § 3(f)(1) of E.O. 12866. Because it affects all mining operations, almost all of which are small businesses using SBA's definition of a small business, we determined that this interim final rule is significant under § 3(f)(4) of E.O. 12866. This section defines a significant regulatory action as one that may—

* * * Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

The REA is available on request from MSHA, Office of Standards, Regulations, and Variances, 4015 Wilson Boulevard, Arlington, VA 22203 or from our Internet Home Page at www.msha.gov.

A. Alternatives Considered

In accordance with § 604 of the RFA, we are including a discussion of the regulatory alternatives considered in developing this interim final rule. We used OSHA's HCS as a model for the proposed rule. For the interim final rule, we also considered suggestions from commenters to the proposal. In part, the limited impact of the interim final rule on small mines reflects our decision not to require more costly alternatives. Most of the alternatives addressed the scope of the standard—what would be covered and what would be exempt. The interim final rule did not adopt any alternatives that were not discussed in the proposal. In response to comments, we did adopt several provisions that differ from the proposal or OSHA's HCS.

1. The proposal would have exempted hazardous waste regulated by EPA under the Resource Conservation and Recovery Act from both the labeling and MSDS provisions of HazCom. The

interim final rule does not exempt hazardous waste regulated by EPA from labeling and MSDSs. We determined that such an exemption would put miners at risk of a potential injury or illness.

2. As proposed, the interim final rule exempts the raw material being mined or milled from labeling while on mine property.

3. The proposed rule exempted from HazCom's labeling requirements certain hazardous substances regulated and labeled under the authority and standards of other Federal agencies. These hazardous substances include cosmetics, drugs, tobacco products, foods, food additives, and color additives which are labeled in accordance with the requirements of the Food and Drug Administration or the Department of Agriculture. The interim final rule extends these exemptions to the full scope of the rule rather than to labeling only.

4. To be consistent with OSHA's HCS, we included exemptions from labeling for hazardous substances that EPA or other Federal agencies require to be labeled for hazards.

5. The proposal would have allowed you to not label temporary, portable containers of a hazardous chemical that was to be used only by the miner who transferred it from its labeled container. The interim final rule allows other miners to use the hazardous chemical from the unlabeled container if you ensure that all miners know the chemical's identity, its hazards, and protective measures; and that you ensure the container is left empty at the end of the shift.

6. In the proposal, we would have required you to label containers of your hazardous product or provide a copy of the labeling information with the first shipment to an employer. The interim final rule does not require you to label your hazardous product for sale to customers who are employers. Rather, we require you to provide the label or labeling information and an MSDS when requested.

7. The interim final rule allows you to credit relevant training provided for compliance with other MSHA standards or OSHA's HCS to meet HazCom's training requirements and we require training records.

B. Consultation With SBA

The RFA requires regulatory agencies to consult with SBA's Chief Counsel for Advocacy about regulations that have an impact on small entities. The RFA also requires us to use SBA's definition of a small entity in determining a rule's economic impact. To comply with this law, we consulted with SBA about this rule and our certification of no significant economic impact on small mines. For the mining industry, SBA defines "small" as a business with 500 or fewer employees (13 CFR 121.201). Almost all of the coal and M/NM mines fall into this category. To establish an alternative definition for the mining industry, after consultation with SBA, we must publish that definition in the **Federal Register** providing an opportunity for public notice and comment.

Traditionally, for regulatory purposes over the past 20 years, we have considered a mine "small" if it employs fewer than 20 miners and "large" if it employs 20 or more. These small mines differ from larger mines not only in the number of employees, but also, among other things, in economies of scale in material produced, in the type and amount of production equipment, and in supply inventory. Their costs of complying with the interim final rule and the impact of the interim final rule on them will also differ. It is for this reason that "small mines," as traditionally defined by the mining community, are of special concern to us.

For purposes of the REA and to comply with the RFA, we analyzed the impact of the interim final rule on mines using SBA's definition of "small," as well as our traditional definition.

C. Compliance Costs

We estimate that the total net yearly cost of the final HazCom rule (30 CFR part 47) will be about \$5.7 million. Table 4 summarizes our estimate of the yearly costs by mine size and by major provision. These costs reflect first year (one-time, start-up) costs of \$15 million and annually recurring costs of \$4.7 million. HazCom will affect all coal and M/NM mines; some only insignificantly.

TABLE 4.—YEARLY COSTS FOR HAZCOM INTERIM FINAL RULE BY PROVISION, COMMODITY, AND MINE SIZE *

Mine size	Provision					Total
	Written program	Labels	MSDSs	HazCom training	Access	
Coal Mines and Independent Contractors						
<20	\$375,300	\$15,700	\$134,400	\$284,300	\$137,500	\$947,300
≥20	258,500	6,231	84,900	261,000	132,200	742,800
M/NM Mines and Independent Contractors (M/NM)						
<20	1,062,900	31,800	450,700	963,000	486,100	2,994,400
≥20	244,300	9,200	94,700	352,900	309,100	1,010,100
All Mining	1,941,000	63,000	764,600	1,861,100	1,064,900	5,694,600

* Values are rounded.

D. Regulatory Flexibility Certification and Factual Basis

Based on our analysis of costs and benefits in the REA, we certify that this HazCom interim final rule will not have a significant economic impact on a substantial number of small mining entities using either SBA's or our traditional definition of "small."

1. Derivation of Costs and Revenues

In this interim final rule, both coal and M/NM mines must absorb compliance costs. We examined the relationship between costs and revenues for the coal and M/NM mine sectors as two independent entities, rather than combining them into one category. All cost estimates in this chapter are presented in 1998 dollars.

For this interim final rule, we estimated the one-time costs, annualized costs (one-time costs amortized over a specific number of years), and annual costs. One-time costs are those that are incurred once and do not recur. For example, the cost to develop a written procedural program occurs only once. For the purpose of this REA, we amortized one-time costs over an infinite life resulting in an annualized cost equal to 7% of the one-time cost. Converting one-time costs to annualized costs allows us to add them to annual costs in order to compute a combined yearly cost for the rule. Annual costs are those that normally recur annually. Three examples of annual costs are maintenance costs, operating expenses, and recordkeeping costs.

Commenters to the recent request for information on the economic impact of HazCom on small mines expressed their belief that we underestimated the costs. Commenters stated that costs for gathering MSDSs and keeping them updated could cost thousands of dollars per year; that we had not included a

cost for lost production; that operators could not train miners or label containers for the \$10 per miner that we estimated as the cost of the rule; and that the wage rates were two to three times too low because consultants, not mine employees, would be conducting the hazard evaluation.

We believe that the cost estimates in the final REA, \$5.7 million affecting about 193,000 miners or about \$30 per miner, represent a reasonable approximation of the burden on operators for the following reasons.

First, we have existing standards for training. We did not calculate a cost for miners to attend training or for lost production because the HazCom training can be accomplished during annual refresher training or task training, both of which require operators to cover health and safety hazards. Our recent final training rules, both the new part 46 and the modified part 48, give operators more flexibility in developing training courses to meet the changing needs of the miners and the changing hazards of the mine environment. For example, these training standards allow the operator to adjust the amount of time spent on each topic. This, in turn, allows the operator to spend more of the training time on mine-specific, task-specific, or new information, tailored to their assessment of the miners' training needs. Operators can credit relevant training already provided to comply with HazCom training requirements. In addition, we delayed the effective date of the rule for one year to give operators the time needed to incorporate the HazCom training into their mines' training cycles. Training costs for HazCom include the time to develop a HazCom training course, time for the instructor to prepare the lesson, the cost for training materials, and the time for making a record of the training.

Second, we have existing standards for labeling. We calculated only a small cost for labels because most hazardous chemicals are already labeled by the manufacturer or supplier before they are brought to the mine, our existing standards require hazardous materials to be labeled, and HazCom exempts the raw materials being mined or milled from labeling. The small cost is for labeling storage tanks of bulk hazardous materials and portable transport containers, as necessary, and for replacing damaged or missing labels.

Third, OSHA's HCS has had widespread impact on State right-to-know regulations and, indirectly, on the mining industry. All operators already comply with some of the provisions of this interim final rule (at least labeling and training). Some comply with most or all of the provisions because of existing Federal, State, or local regulations; voluntarily because of corporate policy; or because they work in industries under OSHA jurisdiction, as well as in the mining industry.

Finally, we are developing compliance aids to reduce the burden on operators, especially small operators. These include generic HazCom programs, MSDSs for common minerals and common hazardous chemicals at mines, generic training programs, training materials, and videos (some to help the operator develop a HazCom program and some to use in training the miner). We will also provide training and compliance assistance through state grants, MSHA health specialists, and our Educational Field Services so that you can understand the rule and comply yourself. The benefit we see is that if you develop your program yourself to meet the unique needs of your operation, you will be better prepared to maintain it. HazCom's effective date is one year after the publication of the rule. During this period, we will make

every effort to help the industry gain compliance before HazCom goes into effect.

Because of our commitment to help the mining industry, especially small operators, implement a HazCom program with minimum burden, we do not anticipate a need for them to hire consultants. We anticipate that the vast majority of hazard determinations will be made by reading the MSDS and label and acting accordingly. We assumed in our calculation of wage rates that mine employees will conduct the hazard determination rather than consultants and this is appropriate for the industry.

In determining revenues for coal mines, we multiplied mine production data (in tons) by the estimated price per ton of the commodity (\$17.58 per ton in 1998). We obtained production data from our CM441 reports⁶ and the price estimates from the Department of Energy.⁷ Because we do not collect data on M/NM mine production, we took the total revenue generated by the M/NM industry (\$40 billion)⁸ and divided it by the total number of employee hours to arrive at the average revenue per hour of employee production (\$104.86). We then took the \$104.86 and multiplied it by the employee hours in specific size categories to arrive at the estimated revenues for the size category.

2. Factual Basis for Certification

Whether or not compliance costs impose a "significant" impact on small entities depends on their effect on the profits, market share, and financial viability of small mines. To address these issues, we had to determine

whether compliance with HazCom will place small mines at a significant competitive disadvantage relative to large mines or impose a significant cost burden on small mines.

The first step in this determination is to establish whether the compliance costs impose a significant burden on small mines in absolute terms. For this purpose, we began with a "screening" analysis of compliance costs relative to revenues for small mines. When estimated compliance costs are less than 1% of estimated revenues, we conclude that there is no significant impact on a substantial number of small entities. When estimated compliance costs approach or exceed 1% of revenue, we conclude that further analysis is needed.

The second step in this determination is to establish whether compliance with HazCom will impose substantial capital or first-year, start-up costs on small mines. Because financing is typically more difficult or more expensive to obtain for small mines than for large mines, initial costs may impose a greater burden on small mines than on large mines. HazCom, however, does not require engineering controls or other items requiring a substantial initial capital expenditure. The initial costs associated with HazCom are those necessary to develop and implement a HazCom program. Because this cost is well below 1% of revenues, we do not consider it to be significant.

The third step in this determination is to establish whether there are significant economies of scale in compliance that place small mines at a competitive

disadvantage relative to large mines. We investigated economies of scale by calculating whether compliance costs are proportional to mine employment. Although the annual compliance cost per miner is greater for small operations than for large, this difference is unlikely to provide strategic leverage because small mines generate over 95% of the revenues in their respective markets. Furthermore, total compliance costs will be greater, on average, for a large mine than for a small mine.

3. Results of Screening Analysis

In all cases, the cost of complying with the interim final rule is well below 1% of revenues.

- For coal mines with fewer than 20 miners, the estimated average yearly cost of HazCom is \$190 per operation, which is about 0.14% of the average annual revenue per operation.

- For coal mines with 500 or fewer miners, the estimated average yearly cost is \$270 per operation, which is about 0.01% of the average annual revenue per operation.

- For M/NM mines with fewer than 20 miners, the estimated average yearly cost of HazCom is \$230 per operation, which is about 0.02% of the average annual revenue per operation.

- For M/NM mines with 500 or fewer miners, the estimated average yearly cost is \$270 per operation, which is less than 0.01% of the average annual revenue per operation. As shown in Table 5, compliance costs represent only about 0.01% of the value of mine production.

TABLE 5.—COMPLIANCE COSTS COMPARED TO REVENUE *

	Small mines (1–500)	Average cost per mine	Total yearly cost (millions)	Total revenue (millions)	Cost as % of revenue
Coal		\$270	\$1.69	\$18,252	0.009
M/NM		269	4.00	35,137	0.011

* Includes independent contractors and their employees.

Because the cost of HazCom as a percentage of revenue is considerably less than 1%, we believe that this result, in conjunction with the previous analysis, provides a reasonable basis for the certification of "no significant impact" in this case.

E. Benefits

In considering a HazCom standard, we reviewed chemically-related injuries and illnesses reported to MSHA

between January 1983 and June 1999. During this period, the mining industry reported almost 4,700 chemical burns crossing 57 commodities and 70 job classifications and involving exposures to chemicals at all sizes and types of mines. This same accident and injury data indicated more than 800 poisonings, 2,600 eye injuries, and 2,100 cases of dermatitis or skin injury as a result of chemical exposures. These data only account for the acute effects

of chemical hazards, not the chronic effects which we know exist.

We conclude that miners face a significant risk from exposure to hazardous chemicals. We further conclude that compliance with this rule will prevent a substantial number of acute illnesses, injuries, and fatalities, as well as long term cancer cases.

HazCom is an important means of ensuring that both operators and miners are aware of the chemical hazards to

⁶ MSHA's 1998 CM441 Report, cycle 1998/198.

⁷ U.S. Department of Energy, Energy Information Administration, *Annual Energy Review 1998*, July 1999, p. 203.

⁸ U.S. Department of the Interior, U.S. Geological Survey, January 1999, pp. 3 and 6.

which they may be exposed at the mine. We anticipate that our HazCom standard will enhance both operator and miner awareness of the safety and health hazards associated with hazardous chemical substances in such a way that both parties will take positive steps to lower exposures, resulting in lower incidence of chemically-related injuries and illnesses. Also, if the miner and operator know the potential health effects from exposure to a chemical, they can forewarn their doctor to watch for signs and symptoms of exposure and further reduce the risk of injury by obtaining early diagnosis and treatment.

Based on our review and analysis of the available data, we estimate that compliance with this rule will prevent one fatality every four years, beginning when the rule takes effect, as well as an annual average of 57 chemically-related acute injuries and illnesses (15 in coal mines and 42 in M/NM mines). Of these 57 injuries and illnesses, 32 will result in 386 lost workdays and 25 will not require lost workdays.

In addition, we expect that HazCom will prevent 76 cancer deaths (51 in coal and 25 in M/NM) from year 11 through year 20 after promulgation and 13.8 cancer deaths every year thereafter.

VI. Other Regulatory Considerations

We recognize that the mining industry has changed since 1990 when we developed the Preliminary Regulatory Impact Analysis (PRIA) and published the HazCom proposal. Most of the changes, however, decreased the impact of HazCom on the mining industry. For example, the number of mines and miners has decreased while the number of independent contractors has increased. Independent contractors are more likely than mines to have an existing hazard communication program because they are more likely to work in operations under OSHA jurisdiction, as well as in mines under MSHA jurisdiction. Similarly, more mines have a hazard communication program now than in 1990 because the parent company also has operations in industries subject to OSHA's HCS, or the mine is located in a State with a State right-to-know law that covers mining. We believe that these existing programs decrease the economic impact of HazCom on the mining industry.

Another change that affects the hazard communication environment is increased public awareness due to the length of time that the OSHA HCS has been in effect. There is an abundance of hazard communication information, supplies, training, and training aids readily available to the public off-the-shelf or through the Internet.

On March 30, 1999, we reopened the rulemaking record (64 FR 15144) for the limited purpose of receiving comments on several regulatory mandates, some of which were not in existence when the Agency published the hazard communication proposal in 1990. These statutory mandates and Executive Orders require the Agency to evaluate the impact of a regulatory action on small mines; on State, local, and tribal governments; on the environment; on constitutionally protected property rights; on the Federal court system; on children; on Indian tribal governments; and on Federalism.

A. The National Environmental Policy Act of 1969

The National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) requires each Federal agency to consider the environmental effects of its actions. NEPA also requires an agency to prepare an Environmental Impact Statement for major actions significantly affecting the quality of the environment. We have reviewed HazCom in accordance with the requirements of NEPA, the regulations of the Council on Environmental Quality (40 CFR 1500), and the Department of Labor's NEPA regulations (29 CFR 11). As a result of this review, we determined that this interim final rule has no significant environmental impact.

B. Unfunded Mandates Reform Act of 1995

For purposes of the Unfunded Mandates Reform Act of 1995, this rule does not include any Federal mandate that may result in increased expenditures by State, local, and tribal governments in the aggregate of more than \$100 million, or increased expenditures by the private sector of more than \$100 million.

C. Executive Order 12630: Government Actions and Interference With Constitutionally Protected Property Rights

HazCom is not subject to E.O. 12630 because it does not involve implementation of a policy with takings implications.

D. Executive Order 12988: Civil Justice Reform

We have reviewed E.O. 12988 and determined that the HazCom interim final rule will not unduly burden the Federal court system. We wrote HazCom to provide a clear legal standard for affected conduct and have reviewed it carefully to eliminate drafting errors and ambiguities.

E. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

We have evaluated the environmental safety and health effects of the rule on children and have determined that the interim final rule will have no disproportionate effect on children.

HazCom is a health and safety information and training rule. It does not set exposure limits or require controls. It can, however, benefit children indirectly. One commenter to the reopened record supported the interim final rule stating that—

- Parents exposed to a genotoxic material could have their reproductive genes damaged which, in turn, could result in miscarriages or congenital or developmental impairments in their children;
- Parents could bring home hazardous chemicals on their clothing or their person which could result in children being injured by contact with the parent; and
- If parents knew that a chemical could adversely affect their children, they would take more precautions to prevent their own and their children's exposure.

F. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

We certify that the interim final rule does not impose substantial direct compliance costs on Indian tribal governments.

Further, MSHA provided the public, including Indian tribal governments which operated mines, the opportunity to comment during the proposed rule's comment period. No Indian tribal government applied for a waiver or commented on the proposal.

G. Executive Order 13132: Federalism

We have reviewed this rule in accordance with E.O. 13132 regarding federalism, and have determined that it does not have "federalism implications." The rule does not "have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

List of Subjects

30 CFR Part 42

Education, Intergovernmental relations, Mine safety and health.

30 CFR Part 47

Chemicals, Hazard communication, Hazardous substances, Labeling,

Material safety data sheets, Mine safety and health, Reporting and recordkeeping requirements, Right-to-know, Training.

30 CFR Part 56

Chemicals, Electric power, Explosives, Fire prevention, Hazardous substances, Metals, Mine safety and health, Noise control, Reporting and recordkeeping requirements.

30 CFR Part 57

Chemicals, Electric power, Explosives, Fire prevention, Gases, Hazardous substances, Metals, Mine safety and health, Noise control, Radiation protection, Reporting and recordkeeping requirements.

30 CFR Part 77

Communications equipment, Electric power, Emergency medical services, Explosives, Fire prevention, Mine safety and health, Reporting and recordkeeping requirements.

Dated: September 22, 2000.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

For the reasons set out in the preamble, and under the authority of the Federal Mine Safety and Health Act of 1977, we are amending chapter I of title 30 of the Code of Federal Regulations as follows.

PART 47—[REDESIGNATED AS PART 42]

1. The authority for part 47 continues to read as follows:

Authority: 30 U.S.C. 957.

2. Part 47—National Mine Health and Safety Academy is transferred to subchapter G—Filing and other administrative requirements, and redesignated as part 42.

PART 56—[AMENDED]

3. The authority citation for part 56 continues to read as follows:

Authority: 30 U.S.C. 811.

4. Section 56.16004 is revised to read as follows:

§ 56.16004 Containers for hazardous materials.

Containers holding hazardous materials must be of a type approved for such use by recognized agencies.

§ 56.20012 [Removed]

5. Section 56.20012 is removed.

PART 57—[AMENDED]

6. The authority citation for part 57 continues to read as follows:

Authority: 30 U.S.C. 811.

7. Section 57.16004 is revised to read as follows:

§ 57.16004 Containers for hazardous materials.

Containers holding hazardous materials must be of a type approved for such use by recognized agencies.

§ 57.20012 [Removed]

8. Section 57.20012 is removed.

PART 77—[AMENDED]

9. The authority citation for part 77 continues to read as follows:

Authority: 30 U.S.C. 811.

10. Paragraph (c) of § 77.208 is revised to read as follows:

§ 77.208 Storage of materials.

* * * * *

(c) Containers holding hazardous materials must be of a type approved for such use by recognized agencies.

* * * * *

PART 47—HAZARD COMMUNICATION (HAZCOM)

11. Add a new part 47 to subchapter H in chapter I, title 30 of the Code of Federal Regulations to read as follows:

PART 47—HAZARD COMMUNICATION (HAZCOM)

Subpart A—Purpose and Scope of HazCom Sec.

47.1 Purpose of a HaZCoM standard.
47.2 Operators and chemicals covered.

Subpart B—Hazard Determination

47.11 Identifying hazardous chemicals.

Subpart C—HaZCoM Program

47.21 Requirement for a HazCom program.
47.22 HazCom program contents.

Subpart D—Container Labels and Other Forms of Warning

47.31 Requirement for container labels.
47.32 Label contents.
47.33 Label alternatives.
47.34 Temporary, portable containers.

Subpart E—Material Safety Data Sheet (MSDS)

47.41 Requirement for an MSDS.
47.42 MSDS contents.
47.43 MSDS for hazardous waste.
47.44 Access to an MSDS.
47.45 Retaining an MSDS.

Subpart F—HazCom Training

47.51 Requirement for HazCom training.

47.52 HazCom training contents.

47.53 HazCom training records.

Subpart G—Making HazCom Information Available

47.61 Access to HazCom materials.
47.62 Cost for copies.
47.63 Providing labels and MSDSs to customers.

Subpart H—Trade Secret Hazardous Chemical

47.71 Provisions for withholding trade secrets.
47.72 Disclosure of trade secret information to MSHA.
47.73 Disclosure in a medical emergency.
47.74 Non-emergency disclosure.
47.75 Confidentiality agreement and remedies.
47.76 Denial of a written request for disclosure.
47.77 Review of denial.

Subpart I—Exemptions

47.81 Exemptions from the HazCom standard.
47.82 Exemptions from labeling.

Subpart J—Definitions

47.91 Definitions of terms used in this part.

Authority: 30 U.S.C. 811, 825.

Subpart A—Purpose and Scope of HazCom

§ 47.1 Purpose of a HazCom standard.

The purpose of this part is to reduce injuries and illnesses by ensuring that each operator—

- (a) Identifies the chemicals at the mine,
- (b) Determines which chemicals are hazardous,
- (c) Establishes a HazCom program, and
- (d) Informs each miner who can be exposed, and other on-site operators whose miners can be exposed, about those hazards and appropriate protective measures.

§ 47.2 Operators and chemicals covered.

This part applies to any operator producing or using a hazardous chemical to which a miner can be exposed under normal conditions of use or in a foreseeable emergency. (Subpart I lists exemptions from coverage.)

Subpart B—Hazard Determination

§ 47.11 Identifying hazardous chemicals.

A hazardous chemical is any chemical that is a physical or health hazard. The operator must evaluate each chemical brought onto mine property and each chemical produced on mine property to determine if it is hazardous as specified in Table 47.11 as follows:

TABLE 47.11.—IDENTIFYING HAZARDOUS CHEMICALS

Category	Basis for determining if a chemical is hazardous
(a) Chemical brought to the mine	<p>(1) The chemical is hazardous when its MSDS or container label indicates it is a physical or health hazard; or the operator may choose to evaluate the chemical using the criteria in paragraph (b) or (c) of this table.</p> <p>(2) If the chemical is a hazardous waste and an MSDS is unavailable, the chemical is hazardous if any of the sources in paragraph (b) of this table indicates it is a physical or health hazard.</p>
(b) Chemical produced at the mine	<p>The chemical is hazardous if any one of the following indicates that it is a hazard:</p> <p>(1) Available evidence concerning its physical hazards.</p> <p>(2) MSHA standards in 30 CFR chapter 1.</p> <p>(3) American Conference of Governmental Industrial Hygienists (ACGIH), "Threshold Limit Values and Biological Exposure Indices" (latest edition).</p> <p>(4) National Toxicology Program (NTP), "Annual Report on Carcinogens" (latest edition).</p> <p>(5) International Agency for Research on Cancer (IARC), Supplement 7 "Overall Evaluations of Carcinogenicity: An Updating of IARC Monographs Volumes 1 to 42," or any subsequent IARC "Monographs" or "Supplements".</p>
(c) Mixture produced at the mine	<p>(1) If a mixture has been tested as a whole to determine its hazards, use the results of that testing.</p> <p>(2) If a mixture has not been tested as a whole to determine its hazards—</p> <p>(i) Use whatever scientifically valid evidence is available to determine its physical hazards;</p> <p>(ii) Assume that it presents the same health hazard as a component that makes up 1% or more (by weight or volume) of the mixture; and</p> <p>(iii) Assume that it presents a carcinogenic hazard if a component considered carcinogenic by ACGIH, NTP, or IARC makes up 0.1% or more (by weight or volume) of the mixture.</p> <p>(3) If evidence indicates that a component could be released from a mixture in a concentration that could present a health risk to miners, assume that the mixture presents the same hazard.</p>

Subpart C—HazCom Program**§ 47.21 Requirement for a HazCom program.**

Each operator must—

- (a) Develop and implement a written HazCom program;
- (b) Maintain it for as long as a hazardous chemical is known to be at the mine; and
- (c) Share relevant HazCom information with other operators whose miners can be affected.

§ 47.22 HazCom program contents.

The HazCom program must include the following:

- (a) How this part is put into practice at the mine through the use of—
 - (1) Hazard determination,
 - (2) Labels and other forms of warning,
 - (3) Material safety data sheets (MSDSs), and
 - (4) Miner training.
- (b) A list or other record of the identity of all hazardous chemicals known to be at the mine. The list must—
 - (1) Use a chemical identity that permits cross-referencing between the

list, a chemical's label, and its MSDS; and

- (2) Be compiled for the whole mine or by individual work areas.
- (c) At mines with more than one operator, the methods for—
 - (1) Providing other operators with access to MSDSs, and
 - (2) Informing other operators about—
 - (i) Hazardous chemicals to which their employees can be exposed,
 - (ii) The labeling system on the containers of these chemicals, and
 - (iii) Appropriate protective measures.

Subpart D—Container Labels and Other Forms of Warning**§ 47.31 Requirement for container labels.**

- (a) The operator must ensure that each container of a hazardous chemical has a label. If a container is tagged or marked with the appropriate information, it is labeled.
- (1) The operator must replace a container label immediately if it is missing or if the hazard information on the label is unreadable.

(2) The operator must not remove or deface existing labels on containers of hazardous chemicals.

(b) For each hazardous chemical produced at the mine, the operator must prepare a container label and update this label with any significant new information about the chemical's hazards within 3 months of becoming aware of this information.

(c) For each hazardous chemical brought to the mine, the operator must replace an outdated label when a revised label is received from the chemical's manufacturer or supplier.

(d) The operator is not responsible for an inaccurate label obtained from the chemical's manufacturer or supplier.

§ 47.32 Label contents.

If an operator must make a label, the label must—

- (a) Be prominently displayed, legible, accurate, and in English;
- (b) Display appropriate hazard warnings; and
- (c) Use a chemical identity that permits cross-referencing between the

list of hazardous chemicals, a chemical's label, and its MSDS.

§ 47.33 Label alternatives.

The operator may use signs, placards, process sheets, batch tickets, operating procedures, or other label alternatives for individual, stationary process containers, provided that the alternative—

(a) Identifies the container to which it applies,

(b) Communicates the same information as required on the label, and

(c) Is readily accessible throughout each work shift to miners in the work area.

§ 47.34 Temporary, portable containers.

The operator does not have to label a temporary, portable container into which a hazardous chemical is transferred from a labeled container provided that—

(a) The operator ensures that the miner using the portable container knows the identity of the chemical, its hazards, and any protective measures needed; and

(b) The portable container is left empty at the end of the shift.

Subpart E—Material Safety Data Sheets (MSDS)

§ 47.41 Requirement for an MSDS.

(a) The operator must have an MSDS for each hazardous chemical before using it. The MSDS may be in any medium, such as paper or electronic, that does not restrict access.

(b) For each hazardous chemical produced at the mine, the operator must prepare an MSDS and update this MSDS with significant new information about the chemical's hazards or protective measures within 3 months of becoming aware of this information.

(c) For each hazardous chemical brought to the mine, the operator must

replace an outdated MSDS when a revised MSDS is received from the chemical's manufacturer or supplier.

(d) Operators may choose to rely on the MSDS received from the chemical manufacturer or supplier. Alternatively, operators may develop their own MSDS or they may obtain one from another source. The operator is not responsible for an inaccurate MSDS obtained from the chemical's manufacturer or supplier.

§ 47.42 MSDS contents.

If an operator must prepare an MSDS, the MSDS must—

(a) Be legible, accurate, and in English;

(b) Use a chemical identity that permits cross-referencing between the list of hazardous chemicals, the chemical's label, and its MSDS; and

(c) Contain information, or indicate if no information is available, for the categories listed in Table 47.42 as follows:

TABLE 47.42.—CONTENTS OF MSDS

Category	Requirements, descriptions, and exceptions
(1) Identity	The identity of the chemical or, if the chemical is a mixture, the identities of all hazardous ingredients. See § 47.11 (identifying hazardous chemicals).
(2) Properties	The physical and chemical characteristics of the chemical such as vapor pressure and solubility in water.
(3) Physical hazards	The physical hazards of the chemical including the potential for fire, explosion, and reactivity.
(4) Health hazards	The health hazards of the chemical including— (i) Signs and symptoms of exposure; (ii) Any medical conditions which are generally recognized as being aggravated by exposure to the chemical; and (iii) The primary routes of entry for the chemical, such as lungs, stomach, or skin.
(5) Exposure limits	For the chemical, or for the ingredients of the mixture— (i) The MSHA permissible limit, if there is one, and (ii) Any other exposure limit recommended by the preparer of the MSDS.
(6) Carcinogenicity	Whether the chemical or an ingredient in the mixture is a carcinogen or potential carcinogen. See the sources specified in § 47.11 (identifying hazardous chemicals).
(7) Safe use	Precautions for safe handling and use including— (i) Appropriate hygienic practices, (ii) Protective measures during repair and maintenance of contaminated equipment, and (iii) Procedures for clean-up of spills and leaks.
(8) Control measures	Generally applicable control measures such as engineering controls, work practices, and personal protective equipment.
(9) Emergency information	(i) Emergency medical and first-aid procedures, and (ii) The name and telephone number of a person who can provide additional information on the hazardous chemical and appropriate emergency procedures.
(10) Date prepared	The date the MSDS was prepared or last changed.

§ 47.43 MSDS for hazardous waste.

(a) If an MSDS is not available for hazardous waste and the operator is unable to obtain or develop one, the operator must provide each potentially exposed miner with the information specified in Table 47.42 for the hazardous waste to the extent that it is available.

(b) If the mine produces or uses hazardous waste, the operator must provide each exposed miner and designated representative with access to any HazCom material which—

- (1) Identifies its hazardous chemical components,
- (2) Describes its physical or health hazards, or
- (3) Specifies appropriate protective measures.

§ 47.44 Access to an MSDS.

The operator must provide miners with access during each work shift to the MSDS for each hazardous chemical to which they may be exposed either—

- (a) At each work area where the hazardous chemical is produced or used, or
- (b) At a central location, provided that a miner can readily access it in an emergency.

§ 47.45 Retaining an MSDS.

The operator must—

- (a) Retain its MSDS for as long as the hazardous chemical is known to be at the mine, and
- (b) Notify miners at least 3 months before disposing of the MSDS.

Subpart F—HazCom Training**§ 47.51 Requirement for HazCom Training.**

(a) The operator must instruct each miner about the hazardous chemicals in his or her work area—

- (1) Before the miner's first assignment to that work area;
- (2) Whenever the operator introduces a new hazardous chemical into the miner's work area, unless the operator has previously trained the miner about the hazard; and

(3) Whenever the operator becomes aware of new and significant information about a chemical's hazards.

(b) Relevant training conducted in compliance with other parts of this chapter or with OSHA's Hazard Communication Standard can be used to meet the requirements of this part. Relevant training conducted in compliance with this part can be used to meet the requirements of other parts of this chapter.

§ 47.52 HazCom training contents.

HazCom training must include instruction on the following:

(a) The physical and health hazards of chemicals in the work area.

(b) The requirements of this part.

(c) The mine's HazCom program, including an explanation of the labeling system and MSDSs and how miners can obtain and use this hazard information.

(d) The location and availability of the written HazCom program, the list of hazardous chemicals, labeling information, and MSDSs.

(e) The operations or locations where hazardous chemicals are present in the miner's work area, such as unlabeled pipes, stockpiles, conveyors, rod or ball mills, containers of raw materials, and non-routine tasks, such as the cleaning of a storage tank that had contained a hazardous chemical.

(f) The methods and observations that can be used to detect the presence or release of a hazardous chemical in the work area.

(g) The measures that a miner can take to protect himself or herself from these hazards.

(h) The specific procedures, such as work practices, engineering controls, emergency procedures, and use of personal protective equipment, in place at the mine to protect miners from hazardous chemical exposure.

§ 47.53 HazCom training records.

The operator must make a record of each miner's HazCom training and keep the record for 2 years.

Subpart G—Making HazCom Information Available**§ 47.61 Access to HazCom materials.**

Upon request, the operator must provide access to all HazCom materials required by this part to miners and designated representatives, except as provided in § 47.71 through § 47.77 (provisions for trade secrets).

§ 47.62 Cost for copies.

(a) The operator must provide the first copy and each revision of the HazCom material without cost.

(b) Fees for a subsequent copy of the HazCom material must be non-discriminatory and reasonable.

§ 47.63 Providing labels and MSDSs to customers.

(a) For a hazardous chemical produced at the mine, the operator must provide customers, upon request, with the chemical's label, or a copy of the label information, and the chemical's MSDS.

(b) The label or label information must include the name and address of a responsible party who can provide additional information about the hazardous chemical.

Subpart H—Trade Secret Hazardous Chemical**§ 47.71 Provisions for withholding trade secrets.**

(a) Operators may withhold the identity of a trade secret chemical, including the name and other specific identification, from the written list of hazardous chemicals, the label, and the MSDS, provided that the operator—

- (1) Can support the claim that the chemical's identity is a trade secret,
- (2) Identifies the chemical in a way that it can be referred to without disclosing the secret,
- (3) Indicates in the MSDS that the chemical's identity is withheld as a trade secret, and

(4) Discloses in the MSDS information on the properties and effects of the hazardous chemical.

(b) The operator must make the chemical's identity available to miners, designated representatives, and health professionals in accordance with the provisions of this subpart H.

(c) This subpart H does not require the operator to disclose process or percentage of mixture information, which is a trade secret, under any circumstances.

§ 47.72 Disclosure of information to MSHA.

(a) Even if the operator has a trade secret claim, the operator must disclose to MSHA, upon request, any information which this subpart H requires the operator to make available.

(b) The operator must make a trade secret claim, no later than at the time the information is provided to MSHA, so that MSHA can determine the trade secret status and implement the necessary protection.

§ 47.73 Disclosure in a medical emergency.

(a) Upon request and regardless of the existence of a written statement of need or a confidentiality agreement, the operator must immediately disclose the identity of a trade secret chemical to the treating health professional when that person determines that—

- (1) A medical emergency exists, and
- (2) The identity of the hazardous chemical is necessary for emergency or first-aid treatment.

(b) The operator may require a written statement of need and confidentiality agreement in accordance with the provisions of § 47.74 and § 47.75 as soon as circumstances permit.

§ 47.74 Non-emergency disclosure.

Upon request, the operator must disclose the identity of a trade secret chemical in a non-emergency situation

to an exposed miner, the miner's designated representative, or a health professional providing services to the miner, if the following conditions are met.

(a) The request is in writing.

(b) The request describes in reasonable detail an occupational health need for the information, as follows:

(1) To assess the chemical hazards to which the miner will be exposed.

(2) To conduct or assess health sampling to determine the miner's exposure levels.

(3) To conduct reassignment or periodic medical surveillance of the exposed miner.

(4) To provide medical treatment to the exposed miner.

(5) To select or assess appropriate personal protective equipment for the exposed miner.

(6) To design or assess engineering controls or other protective measures for the exposed miner.

(7) To conduct studies to determine the health effects of exposure.

(c) The request explains in detail why the disclosure of the following information would not satisfy the purpose described in paragraph (b) of this section:

(1) The properties and effects of the chemical.

(2) Measures for controlling the miner's exposure to the chemical.

(3) Methods of monitoring and analyzing the miner's exposure to the chemical.

(4) Methods of diagnosing and treating harmful exposures to the chemical.

(d) The request describes the procedures to be used to maintain the confidentiality of the disclosed information.

(e) The requester enters a written confidentiality agreement that he or she will not use the information for any purpose other than the health needs

asserted and agrees not to release the information under any circumstances, except as authorized by § 47.75, by the terms of the agreement, or by the operator.

§ 47.75 Confidentiality agreement and remedies.

(a) The confidentiality agreement authorized by § 47.74—

(1) May restrict the use of the trade secret chemical identity to the health purposes indicated in the written statement of need;

(2) May provide for appropriate legal remedies in the event of a breach of the agreement, including stipulation of a reasonable pre-estimate of likely damages;

(3) Must allow the exposed miner, the miner's designated representative, or the health professional to disclose the trade secret chemical identity to MSHA.

(4) May provide that the exposed miner, the miner's designated representative, or the health professional inform the operator who provided the trade secret chemical identity prior to or at the same time as its disclosure to MSHA; and

(5) May not include requirements for the posting of a penalty bond.

(b) Nothing in this subpart precludes the parties from pursuing non-contractual remedies to the extent permitted by law.

§ 47.76 Denial of a written request for disclosure.

To deny a written request for disclosure of the identity of a trade secret chemical, the operator must—

(a) Put the denial in writing, and

(1) Include evidence to substantiate the claim that the chemical's identity is a trade secret,

(2) State the specific reasons why the request is being denied, and

(3) Explain how alternative information will satisfy the specific

medical or occupational health need without revealing the chemical's identity.

(b) Provide the denial to the health professional, miner, or designated representative within 30 days of the request.

§ 47.77 Review of denial.

(a) The health professional, miner, or designated representative may refer the written denial to MSHA for review. The request for review must include a copy of—

(1) The request for disclosure of the identity of the trade secret chemical,

(2) The confidentiality agreement, and

(3) The operator's written denial,
(b) If MSHA determines that the identity of the trade secret chemical should have been disclosed, the operator shall be subject to citation by MSHA.

(c) If MSHA determines that the confidentiality agreement would not sufficiently protect against unauthorized disclosure of the trade secret, MSHA may impose additional conditions to ensure that the occupational health services are provided without an undue risk of harm to the operator.

(d) If the operator contests a citation for a failure to release the identity of a trade secret chemical, the matter will be adjudicated by the Mine Safety and Health Review Commission. The Administrative Law Judge may review the citation and supporting documentation in camera or issue appropriate orders to protect the trade secret.

Subpart I—Exemptions

§ 47.81 Exemptions from the HazCom standard.

A hazardous chemical is exempt from this part 47 under the conditions described in Table 47.81 as follows:

TABLE 47.81.—CHEMICALS AND PRODUCTS EXEMPT FROM THIS HAZCOM STANDARD

Exemption	Conditions for exemption
Article	If, under normal conditions of use, it— (1) Releases no more than insignificant amounts of a hazardous chemical, and (2) Poses no physical or health risk to exposed miners.
Biological hazards	All biological hazards, such as poisonous plants, insects, and micro-organisms.
Consumer product	As defined in the Consumer Product Safety Act, if the operator can show that— (1) The miner uses it for the purpose the manufacturer intended; and (2) Such use does not expose the miner more often and for longer than ordinary consumer use.

TABLE 47.81.—CHEMICALS AND PRODUCTS EXEMPT FROM THIS HAZCOM STANDARD—Continued

Exemption	Conditions for exemption
Cosmetics, drugs, food, food additive, color additive drinks, alcoholic beverages, tobacco and tobacco products, or medical or veterinary device or product, including materials intended for use as ingredients in such products (such as flavors and fragrances).	When labeled in accordance with the Federal Food, Drug, and Cosmetic Act or the Virus-Serum-Toxin Act or regulations issued under those Acts, if they are packaged for retail sale and color intended for personal consumption or use by additive, miners while on mine property.
Hazardous substance	As defined in the Federal Hazardous Substances Act, if the operator can show that— (1) The miner uses it for the purpose the manufacturer intended; and (2) Such use does not expose the miner more often and for longer than ordinary consumer use.
Radiation	All ionizing or non-ionizing radiation, such as alpha or gamma, micro-waves, or x-rays.
Wood or wood products, including lumber	If they do not release or otherwise result in exposure to a hazardous chemical under normal conditions of use. For example, wood is not exempt if it is treated with a hazardous chemical or if it will be subsequently cut or sanded.

§ 47.82 Exemptions from labeling.

A hazardous chemical is exempt from subpart D of this part 47 under the conditions described in Table 47.82 as follows:

TABLE 47.82.—HAZARDOUS CHEMICALS EXEMPT FROM LABELING

Exemption	Conditions for exemption
Chemical substance or mixture regulated by EPA	When labeled in accordance with the Toxic Substances Control Act or regulations issued under that Act.
Consumer product or hazardous substance not exempt under § 47.81 ..	When subject to a consumer product safety standard or a labeling requirement of the Consumer Product Safety Act and Federal Hazardous Substances Act respectively, or regulations issued under those Acts.
Hazardous substances	When the subject of remedial or removal action under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) in accordance with EPA regulations.
Pesticide regulated by EPA or the Department of Agriculture	When labeled in accordance with the Federal Insecticide, Fungicide, and Rodenticide Act or the Federal Seed Act or regulations issued under those Acts.
Raw material being mined or processed	While on mine property, except when the container holds a mixture of the raw material and another hazardous chemical and the mixture is determined to be hazardous under § 47.11 (identifying hazardous chemicals) of this part.
Wood or wood products, including lumber, not exempt under § 47.81 ...	If it releases more than insignificant amounts of a hazardous chemical or will be subsequently cut or sanded.

Subpart J—Definitions**§ 47.91 Definitions of terms used in this part.**

The definitions in Table 47.91 apply in this part 47 as follows:

TABLE 47.91.—DEFINITIONS

Term	Definition for purposes of HazCom
Access	The right to examine and copy records.

TABLE 47.91.—DEFINITIONS—Continued

Term	Definition for purposes of HazCom
Article	A manufactured item, other than a fluid or particle, that— (1) Is formed to a specific shape or design during manufacture, and (2) Has end-use functions dependent upon its shape or design.
Chemical	Any element, chemical compound, or mixture of these.
Chemical name	(1) The scientific designation of a chemical in accordance with the nomenclature system of either the International Union of Pure and Applied Chemistry (IUPAC) or the Chemical Abstracts Service (CAS), or (2) A name that will clearly identify the chemical for the purpose of conducting a hazard evaluation.
Common name	Any designation or identification (such as a code name, code number, trade name, brand name, or generic name) used to identify a chemical other than by its chemical name.
Consumer product	Any article or component that is— (1) Produced or distributed for sale to a consumer; (2) Normally used for personal, family, household, school, or recreation purposes; and (3) Labeled in accordance with the Consumer Product Safety Act or regulations issued under that Act.
Container	(1) Any bag, barrel, bottle, box, can, cylinder, drum, reaction vessel, storage tank, or the like. (2) The following are not considered to be containers for the purpose of compliance with this part: (i) Pipes or piping systems; (ii) Conveyors; and (iii) Engines, fuel tanks, or other operating systems or parts in a vehicle.
Cosmetics and drugs	(1) Cosmetics are any article applied to the human body for cleansing, beautifying, promoting attractiveness or altering appearance. (2) Drugs are any article used to affect the structure or any function of the body of humans or other animals.
Designated representative	(1) Any individual or organization to whom a miner gives written authorization to exercise the miner's rights under this part, or (2) A representative of miners under part 40 of this chapter.
EPA	The U.S. Environmental Protection Agency.
Exposed	Subjected, or potentially subjected, to a physical or health hazard in the course of employment. "Subjected," in terms of health hazards, includes any route of entry, such as through the lungs (inhalation), the stomach (ingestion), or the skin (skin absorption).
Foreseeable emergency	Any potential occurrence that could result in an uncontrolled release of a hazardous chemical into the mine and for which an operator normally would plan, such as equipment failure, breaks or spills of containers, or failure of control equipment.
Hazard warning	Any words, pictures, or symbols, appearing on a label or other form of warning, that convey the specific physical and health hazards of the chemical. (See the definitions for <i>physical hazard</i> and <i>health hazard</i> for examples of the hazards that the warning must convey.)
Hazardous chemical	Any chemical that presents a physical or health hazard.
Hazardous waste	Chemicals regulated by EPA under the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act.

TABLE 47.91.—DEFINITIONS—Continued

Term	Definition for purposes of HazCom
Health hazard	A chemical for which there is statistically significant evidence that it can cause acute or chronic health effects in exposed persons. <i>Health hazard</i> includes chemicals which— (1) Cause cancer; (2) Damage the reproductive system or cause birth defects; (3) Irritate or corrode tissues; (4) Cause a sensitization reaction; (5) Damage the liver; (6) Damage the kidneys; (7) Damage the nervous system, including psychological or behavioral problems; (8) Damage the blood or lymphatic systems; (9) Damage the stomach or intestines; and (10) Damage the lungs, skin, eyes, or mucous membranes.
Health professional	A physician, nurse, physician's assistant, emergency medical technician, industrial hygienist, toxicologist, epidemiologist, or other person qualified to provide medical or occupational health services.
Identity	A chemical's <i>common name</i> or <i>chemical name</i> .
Label	Any written, printed, or graphic material displayed on or affixed to a container to identify its contents and convey other relevant information.
Material safety data sheet (MSDS)	Written or printed material concerning a hazardous chemical which— (1) An operator prepares in accordance with Table 47.42 (MSDS requirements) of this part, or (2) An employer prepares in accordance with 29 CFR 1910.1200, 1915.1200, 1917.28, 1918.90, 1926.59, or 1928.21 (OSHA Hazard Communication regulations).
Mixture	Any combination of two or more chemicals which is not the result of a chemical reaction.
Ordinary consumer use	A product or article packaged by the manufacturer or retailer for ordinary household, family, school, recreation, or other personal use or enjoyment, as opposed to business use, and the miner's exposure is not more than it would be for an ordinary consumer using the product as the manufacturer intended.
OSHA	The Occupational Safety and Health Administration, U.S. Department of Labor.

TABLE 47.91.—DEFINITIONS—Continued

Term	Definition for purposes of HazCom
Physical hazard	<p>A chemical for which there is scientifically valid evidence that it is—</p> <ol style="list-style-type: none"> (1) A <i>combustible liquid, i.e.</i> <ol style="list-style-type: none"> (i) A liquid having a flash point at or above 100 °F (37.8 °C) and below 200 °F (93.3 °C); or (ii) A liquid mixture having components with flashpoints of 200 °F (93.3 °C) or higher, the total volume of which make up 99% or more of the mixture. (2) A <i>compressed gas, i.e.</i> <ol style="list-style-type: none"> (i) A contained gas or mixture of gases with an absolute pressure exceeding: <ol style="list-style-type: none"> (A) 40 psi (276 kPa) at 70 °F (21.1 °C); or (B) 104 psi (717 kPa) at 130 °F (54.4 °C) regardless of pressure at 70 °F. (ii) A liquid having a vapor pressure exceeding 40 psi (276 kPa) at 100 °F (37.8 °C) as determined by ASTM D-323-72. (3) An <i>explosive, i.e.</i>, a chemical that undergoes a rapid chemical change causing a sudden, almost instantaneous release of pressure, gas, and heat when subjected to sudden shock, pressure, or high temperature; (4) A <i>flammable, i.e.</i>, a chemical that will readily ignite and, when ignited, will burn persistently at ambient temperature and pressure in the normal concentration of oxygen in the air; (5) An <i>organic peroxide, i.e.</i>, an explosive, shock sensitive, organic compound or an oxide that contains a high proportion of oxygen-superoxide; (6) An <i>oxidizer, i.e.</i>, a chemical, other than an explosive, that initiates or promotes combustion in other materials, thereby causing fire either of itself or through the release of oxygen or other gases; (7) A <i>pyrophoric, i.e.</i>, capable of igniting spontaneously in air at a temperature of 130 °F (54.4 °C) or below. (8) <i>Unstable (reactive), i.e.</i>, a chemical which in the pure state, or as produced or transported, will vigorously polymerize, decompose, condense, or become self-reactive under conditions of shock, pressure, or temperature; or (9) <i>Water-reactive, i.e.</i>, a chemical that reacts with water to release a gas that is either flammable or a health hazard.
Produce	To manufacture, process, formulate, generate, or repackage.
Raw material	Ore, valuable minerals, worthless material or gangue, overburden, or a combination of these, that is removed from natural deposits by mining or is upgraded through milling.
Trade secret	Any confidential formula, pattern, process, device, information, or compilation of information that is used by the operator and that gives the operator an opportunity to obtain an advantage over competitors who do not know or use it.
Use	To package, handle, react, or transfer.
Work area	Any place in or about a mine where a miner works.

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H.R. 1729/P.L. 106-266

To designate the Federal facility located at 1301 Emmet Street in Charlottesville, Virginia, as the "Pamela B. Gwin Hall". (Sept. 22, 2000; 114 Stat. 787)

H.R. 1901/P.L. 106-267

To designate the United States border station located in Pharr, Texas, as the "Kika de la Garza United States Border Station". (Sept. 22, 2000; 114 Stat. 788)

H.R. 1959/P.L. 106-268

To designate the Federal building located at 643 East Durango Boulevard in San Antonio, Texas, as the "Adrian A. Spears Judicial Training Center". (Sept. 22, 2000; 114 Stat. 789)

H.R. 4608/P.L. 106-269

To designate the United States courthouse located at 220 West Depot Street in Greeneville, Tennessee, as

the "James H. Quillen United States Courthouse". (Sept. 22, 2000; 114 Stat. 790)

S. 1027/P.L. 106-270

Deschutes Resources Conservancy Reauthorization Act of 2000 (Sept. 22, 2000; 114 Stat. 791)

S. 1117/P.L. 106-271

Corinth Battlefield Preservation Act of 2000 (Sept. 22, 2000; 114 Stat. 792)

S. 1374/P.L. 106-272

Jackson Multi-Agency Campus Act of 2000 (Sept. 22, 2000; 114 Stat. 797)

S. 1937/P.L. 106-273

To amend the Pacific Northwest Electric Power

Planning and Conservation Act to provide for sales of electricity by the Bonneville Power Administration to joint operating entities. (Sept. 22, 2000; 114 Stat. 802)

S. 2869/P.L. 106-274

Religious Land Use and Institutionalized Persons Act of 2000 (Sept. 22, 2000; 114 Stat. 803)

Last List September 21, 2000

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Editorial Note: The Effective Dates Chart in the issue of Monday, October 2, 2000, was incorrectly printed and is being republished as follows:

TABLE OF EFFECTIVE DATES AND TIME PERIODS —OCTOBER 2000

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these

dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
Oct 2	Oct 17	Nov 1	Nov 16	Dec 1	Jan 2
Oct 3	Oct 18	Nov 2	Nov 17	Dec 4	Jan 2
Oct 4	Oct 19	Nov 3	Nov 20	Dec 4	Jan 3
Oct 5	Oct 20	Nov 6	Nov 20	Dec 4	Jan 4
Oct 6	Oct 23	Nov 6	Nov 20	Dec 5	Jan 5
Oct 10	Oct 25	Nov 9	Nov 24	Dec 11	Jan 9
Oct 11	Oct 26	Nov 13	Nov 27	Dec 11	Jan 10
Oct 12	Oct 27	Nov 13	Nov 27	Dec 11	Jan 11
Oct 13	Oct 30	Nov 13	Nov 27	Dec 12	Jan 12
Oct 16	Oct 31	Nov 15	Nov 30	Dec 15	Jan 16
Oct 17	Nov 1	Nov 16	Dec 1	Dec 18	Jan 16
Oct 18	Nov 2	Nov 17	Dec 4	Dec 18	Jan 17
Oct 19	Nov 3	Nov 20	Dec 4	Dec 18	Jan 18
Oct 20	Nov 6	Nov 20	Dec 4	Dec 19	Jan 19
Oct 23	Nov 7	Nov 22	Dec 7	Dec 22	Jan 22
Oct 24	Nov 8	Nov 24	Dec 8	Dec 26	Jan 23
Oct 25	Nov 9	Nov 24	Dec 11	Dec 26	Jan 24
Oct 26	Nov 13	Nov 27	Dec 11	Dec 26	Jan 25
Oct 27	Nov 13	Nov 27	Dec 11	Dec 26	Jan 26
Oct 30	Nov 14	Nov 29	Dec 14	Dec 29	Jan 29
Oct 31	Nov 15	Nov 30	Dec 15	Jan 2	Jan 30